UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 3, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 09-33808-D-11 KIP/ILLA SKIDMORE — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2192 RLC-10 — 10-27-14 [129]
REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL

Tentative ruling:

This is the plaintiff's motion for entry of a default judgment against defendant Intervest-Mortgage Investment Co. ("Intervest") in the amount of $8,067.77, which is the amount by which the plaintiff alleges he overpaid Intervest on account of its claim in the chapter 11 case in which this adversary proceeding is pending. The court takes judicial notice of the record in this proceeding, which demonstrates that Intervest was properly served with a reissued summons and the complaint, and failed to answer or otherwise plead within the time permitted or at all. Intervest's default has been entered. Accordingly, the court intends to grant the motion upon submission of evidence by the plaintiff that, in his capacity as plan administrator in the chapter 11 case, he overpaid Intervest by $8,067.77 on account of its claim in the case. (The motion states that at the hearing, the plaintiff will present proof that he is entitled to judgment against Intervest because he overpaid it $8,067.77 on account of its claim. As of this date, he has submitted no such proof.)

The court will hear the matter.

2.	11-39612-D-7 SS-1	WILLIAM/COLLETTE HILL	MOTION TO RECONSIDER, MOTION FOR DISCRETIONARY ABSTENTION AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 10-31-14 [95]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of creditors Colin Ransdell and Jessica Jones (the "moving parties") for reconsideration of the court's order dated October 18, 2014 by which this chapter 7 case was reopened, for discretionary abstention, and for a determination that, pursuant to § 362(c)(2), the automatic stay is no longer in force, the debtors having received a discharge. The debtors have filed opposition. For the following reasons, the motion will be granted in part, and the court will order the case to be re-closed.

The court will order the case re-closed for the following reasons. First, the debtors' opposition to the motion is not appropriate because it was signed and filed by an attorney who is not their attorney of record in the case. The attorney who commenced this case on behalf of the debtors, and who remained their attorney of record when the case was closed, in September of 2013, was Michael Karimi, of the Law Office of Michael Karimi, in Modesto, whereas the debtors' opposition to this motion was signed and filed by attorney Virginia Gingery, of the Law Office of Virginia L. Gingery, in Chico, as the debtors' attorney. Ms. Gingery has not appeared in this action in any manner authorized by LBR 2017-1(b)(2); thus, she may not participate in the case. LBR 2017-1(b)(1). (The court notes that yet a third attorney, Douglas Jacobs, of Jacobs, Anderson, Potter & Chaplin, in Chico, filed the motion to reopen the case on behalf of the debtors.)

For the sake of completeness, and in the interest of judicial economy, the case will be ordered re-closed for the following additional independent reasons. The debtors filed their petition commencing this chapter 7 case on August 11, 2011. They received a chapter 7 discharge on December 12, 2011, and the case was closed on September 12, 2013. On October 17, 2014, the debtors filed a motion to reopen this case pursuant to § 350(b) of the Bankruptcy Code, to allow them "to address an adversary proceeding." Motion to Reopen, at 1:20. As reopening a bankruptcy case is essentially a ministerial act,[1] the court ordered the case reopened. As of this date, the debtors have not filed an adversary complaint or taken any action in the case other than to oppose this motion.

In support of this motion for reconsideration, moving party Colin Ransdell testifies about a pre-petition contract he and his wife entered into with debtor William Hill, Hill's alleged breach of which Ransdell alleges gave rise to claims against him for breach of contract and fraud. Ransdell testifies he and his wife were not listed as creditors in the debtors' bankruptcy case, and were not advised of the bankruptcy filing until August 11, 2013, approximately 18 months after the debtors received their discharge. Ransdell testifies to numerous communications between the parties during the intervening time period during which it appears Hill had the opportunity and the incentive to notify the moving parties of his bankruptcy case, but according to Ransdell, Hill did not do so. On February 3, 2014, the moving parties filed a complaint against Hill in state court. According to Ransdell, Hill never raised his bankruptcy filing as a defense in the state court action.

In October of 2014, shortly after Ransdell and his wife filed a discovery motion in the state court action, they received a letter from Virginia Gingery, as attorney for Hill, demanding they dismiss the state court action because of the bankruptcy case. A copy of the letter has been filed as an exhibit. Ransdell has also submitted as an exhibit a declaration Ms. Gingery filed in the state court action, in which she represented that because the bankruptcy case had been reopened, the automatic stay was revived, and the state court case could not go forward. In the declaration, Ms. Gingery stated under oath as follows: "Pursuant to 11 U.S.C. § 362(a)(1), the reopening of Bankruptcy Case No. 11-39612-D-7 operates as an automatic stay of the continuation of all proceedings in the above-captioned matter [the state court action] as against Defendant William Hill."[2] Based on that declaration, the state court judge vacated the trial date, which had been set for January 26, 2015. The court's tentative ruling, a copy of which the moving parties have filed as an exhibit, states: "The Court has been advised that Mr. Hill has reopened his bankruptcy case. Therefore, the automatic stay is in effect. The matter is continued to February 10, 2015, for case management and resetting of these motions."[3]

Ms. Gingery's statement in her declaration filed in the state court action represents a serious misunderstanding of the bankruptcy process. First, "the automatic stay terminates upon closing except with respect to property that retains its status as 'property of the estate' after closing." Menk v. Lapaglia (in Re Menk), 241 B.R. 896, 913 (9th Cir. BAP 1999). Second, "[r]eopening the case does not undo any of the statutory consequences of closing." Id. Thus, "to the extent that the automatic stay expired in conjunction with closing, it does not automatically spring back into effect. If protection is warranted after a case is reopened, then an injunction would need to be imposed." Id. at 914.[4] In the present case, nothing about the state court action implicates property of the bankruptcy estate; thus, as to the state court action, which is strictly an action against debtor William Hill personally, the automatic stay was terminated when the case was closed, pursuant to § 362(c)(2), and it was not revived when the case was reopened.

In addition, although determination of the issue would require an adversary proceeding (see Fed. R. Bankr. P. 7001(6) and (9)), Ms. Gingery may well have been mistaken when she asserted in her letter to the moving parties that any debt Hill may have owed them had been discharged in bankruptcy.[5] The problem with her contention is that the moving parties were not listed by the debtors in their bankruptcy schedules.[6] To cover that difficulty, Ms. Gingery asserted in her letter and in opposition to this motion that the debtors' case was a no-asset case. She cites Beezley v. California Land Title Co., 994 F.2d 1433 (9th Cir. 1993), in which the court held that in a "no asset, no bar date Chapter 7 case," a debt omitted from the debtor's schedules is covered by the discharge. 994 F.2d at 1434. This is because in such a case, no claims bar date is ever set, and thus, it can never be too late to file a timely proof of claim. See 994 F.2d at 1436, J. O'Scannlain, concurring (citations omitted). In other words, the § 523(a)(3)(A) exception to discharge is never triggered. Id.

The problem with Ms. Gingery's citation to Beezley is two-fold. First, this was not a "no-asset, no-claims bar date" case. The case was originally noticed as a no-asset case; that is, in the notice of commencement of case, creditors were advised it appeared unlikely there would be a dividend paid to creditors, and thus, that it was unnecessary to file a claim at that time. However, the trustee later sent out a notice of a possible recovery of assets, fixing May 18, 2012 as the deadline to file a proof of claim. Ransdell testifies unequivocally that Hill

notified him of the bankruptcy filing on August 11, 2013, long after the claims bar date. Hill's testimony is more ambiguous. First, he blames his bankruptcy attorney for failing to list the moving parties on his bankruptcy schedules; he then states that "prior to the bankruptcy closing, I personally told [the moving parties] that I had, in fact, filed for bankruptcy." Hill Decl., filed Nov. 19, 2014, 2:1-2 (emphasis in original). It is irrelevant that the moving parties were aware of the bankruptcy case before the case was closed; the question is whether they were aware of it "in time to permit . . . timely filing of a proof of claim . . . ." § 523(a)(3)(A). From the evidence of record, it strongly appears the moving parties did not have notice of the bankruptcy case until long after the deadline to file claims. It is similarly irrelevant that Hill may have intended to list the moving parties on his bankruptcy schedules. See id.

In Hill's declaration and in their opposition, the debtors repeatedly refer to their case as a "no asset, no bar bankruptcy," without mentioning the fact that a claims bar date was in fact set. Thus, they and Ms. Gingery either did not review the docket in the case or are relying on the fact, which they also have not mentioned, that the case was ultimately closed without a distribution to creditors. If the latter is true, however, that circumstance does not assist the debtors. Some courts have concluded they have discretion to carve out an exception to the express language of § 523(a)(3)(A), so as to permit the discharge of omitted debts in cases in which a claims bar date was set but the estate ultimately had no assets, and thus, no distribution was made. This view was rejected, however, in In re Laczko, 37 B.R. 676, 679 (9th Cir. BAP 1984), and has since been rejected in Mt. W. Fed. Credit Union v. Stradinger (In re Stradinger), 2007 Bankr. LEXIS 2716, *23-24 (Bankr. D. Mont. 2007) [citing the plain language of the statute and the principle that even courts of equity have no power to reach results contrary to the statutory scheme]. See also Purcell v. Khan (In re Purcell), 362 B.R. 465, 475 (Bankr. E.D. Cal. 2007); In re Corgiat, 123 B.R. 388, 391 (Bankr. E.D. Cal. 1991); In re Bosse, 122 B.R. 410, 416 (Bankr. C.D. Cal. 1990) [all rejecting the theory that the discharge covers an omitted debt in a case noticed as an asset case, with a claims bar date set, but ultimately proving to be a no-asset case].

The court agrees with Judge Holman's thorough analysis in Purcell and especially his conclusion that the right to a distribution is not the only right of which omitted creditors are deprived. He points to the right to object to the claims of other creditors, to the debtor's discharge, to the trustee's administration of the estate, and to the trustee's expenses. Purcell, 362 B.R. at 476. But there is an even more basic issue at stake.

> To invoke an equitable exception to Section 523(a)(3) and extend it to cases like Plaintiff's also runs counter to the policy of ensuring a fair and equitable distribution of the bankruptcy estate. Creditors often play a role in gathering and transmitting information about the bankruptcy case to the trustee, other creditors and the court. As creditors seek to assert and protect their rights and interests as against the debtor, the bankruptcy estate and other creditors, they also furnish the bankruptcy court with information that allows the court to render decisions that result in both a fair and equitable distribution of the assets of the bankruptcy estate to creditors and affords the debtor a fresh start that is justly earned. Creditors can thus assist in the proper functioning of the bankruptcy system. To create an exception that might encourage debtors to schedule creditors selectively on the basis of a hypothetical distribution of assets undermines both this function of the creditor and the goals of the Bankruptcy Code.

Id. In this case, because the moving parties did not have notice or actual knowledge of the bankruptcy case in time to file a proof of claim; that is, sufficiently earlier than May 18, 2012 to give them a reasonable time to prepare and file a claim, the debtors' debt to them is not covered by the debtors' discharge.

The second problem with Ms. Gingery's citation to Beezley is that it overlooks the fact that the moving parties' state court complaint includes a fraud cause of action, which if proven, brings the debt within the scope of § 523(a)(2). If that is the case, the debt "has not been discharged, and is non-dischargeable" (Beezley, 994 F.2d at 1434) unless the moving parties had notice of the debtors' bankruptcy case in time to file a timely request for a determination of nondischargeability under that subsection. In this case, the deadline for the filing of nondischargeability complaints was December 5, 2011. The debtors do not suggest the moving parties had notice or actual knowledge of their bankruptcy case in time to prepare and file an adversary complaint by that date. Thus, as to any debt based on the moving parties' fraud cause of action, the debt is not covered by the debtors' discharge (§ 523(a)(3)(B)), and it makes no difference whether the case was an asset or a "no-asset, no-claims bar date" case.

Finally, the debtors incorrectly assert that this court has exclusive jurisdiction to consider the issue of whether Hill's debt is dischargeable. Except as to debts alleged to be nondischargeable under § 523(a)(2), (4), (6), and (15), the state court and the bankruptcy court have concurrent jurisdiction to determine whether a debt is nondischargeable. Rein v. Providian Fin. Corp., 270 F.3d 895, 904, n.15 (9th Cir. 2001). Thus, the two courts have concurrent jurisdiction to determine whether a debt omitted from a debtor's schedules, such as the debt at issue here, is nondischargeable under § 523(a)(3). Menk v. Lapaglia (in Re Menk), 241 B.R. 896, 904 (9th Cir. BAP 1999); Pasian v. Leonetti (In re Pasian), 2010 Bankr. LEXIS 1658, *2 (Bankr. N.D. Cal. 2010); Gilbertson v. PEI/Genesis, Inc. (In re Gilbertson), 2007 Bankr. LEXIS 3039, *9-10; Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin), 179 B.R. 913, 924 (Bankr. E.D. Cal. 1995). Thus, the state court has concurrent jurisdiction to determine the issues raised by the state court action, and to determine whether any judgment that may be entered in that action is nondischargeable; that is, whether it is covered by the debtors' bankruptcy discharge.

The moving parties request that in addition to reconsidering the order reopening this case, that the court abstain from determining the issue of dischargeability of the debts allegedly due them, and allow the state court action to proceed. The court need not decide the abstention issue for the simple reason that there is no pending proceeding for the court to abstain from deciding. Whereas the court might have entertained the notion of allowing the case to remain open a short time for the debtors to file an adversary complaint to determine dischargeability under § 523(a)(3), the court will not do so here, where the debtors (1) waited over eight months from the time the moving parties commenced the state court action before seeking to reopen this case; (2) have taken no action to commence an adversary proceeding in the several weeks since the case was reopened; and (3) filed opposition to this motion through an attorney who is not their attorney of record.

The court would add that the debtors' filing, on November 20, 2014 (through attorney Douglas Jacobs, who is not their attorney of record), of an amended Schedule F on which they have listed the moving parties as holding an unsecured claim in the amount of $109,885 represents a misunderstanding of the main point of the Beezley decision, which was that adding an omitted debt to a debtor's schedules

after the case has been closed is "a pointless exercise." Beezley, 994 F.2d at 1434. The debt is either dischargeable or it is not, under § 523(a)(3); whether it is listed after the fact in the debtor's schedules has no bearing on the issue. Id.

For the reasons stated, the court will grant the motion in part and order this chapter 7 case to be re-closed and the moving party is to submit an order consistent with this ruling. No appearance is necessary.

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1 Lopez v. Specialty Restaurants Corp. (In re Lopez), 283 B.R. 22, 26 (9th Cir. BAP 2002).

2 Moving parties' Ex. C, filed Oct. 31, 2014, at 2:7-9.

3 Moving parties' Ex. D.

4 See also Lopez, 283 B.R. at 32 ["Reopening does not bring property back into the estate nor does it cause the automatic stay to be revived."].

5 She also threatened to reopen the bankruptcy case to bring a motion for contempt against the moving parties for violation of the discharge, and to "file for a stay of all proceedings against [Hill] at [the moving parties'] expense." Moving parties' Ex. B.

6 According to debtor William Hill, he intended to list the moving parties as creditors, and included them in a list he faxed to his bankruptcy attorney. Hill claims he "was unaware that Plaintiffs' claim was not listed on the bankruptcy petition." Hill Decl., filed Nov. 19, 2014, at 1:26-27. This testimony raises the question whether Hill complied with his duty of careful, complete, and accurate reporting in his schedules filed in this case. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

3.	14-25816-D-11 WFH-1	DEEPAL WANNAKUWATTE IMG FUNDING, LLC VS.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-10-14 [169]

This matter will not be called before 10:30 a.m.

4.	14-27519-D-12 WW-9	LOEK VAN WARMERDAM	MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER & WILHELM LAW GROUP FOR RILEY C. WALTER, DEBTOR'S ATTORNEY(S) 11-7-14 [122]

5. 14-28819-D-7 CHARLES MERIDITH — MOTION TO AVOID LIEN OF CPF RENAISSANCE CREEK, LLC
MRE-2 — 11-4-14 [31]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

6. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
WFH-1 IMG FUNDING, LLC VS. — 9-10-14 [224]

This matter will not be called before 10:30 a.m.

7. 06-22532-D-7 RIO MORALES — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S)
DNL-6 — 11-5-14 [527]

Tentative ruling:

This is the motion of Desmond, Nolan, Livaich & Cunningham ("Counsel") for a first and final allowance of compensation as counsel for the chapter 7 trustee in this case. A creditor, Lichen, Inc. ("Lichen"), has filed opposition. For the following reasons, the motion will be granted.

By its motion, Counsel seeks allowance of attorney's fees totaling $54,287.59 for the period January 3, 2011 through October 16, 2014. Lichen objects to allowance of that portion of Counsel's fees incurred in litigating Adv. Proc. No. 12-2587, Didriksen v. Lichen, Inc., $50,259.50, claiming the services performed were unnecessary and the fees charged were unreasonable. The basis of the objection is that the court based its decision in that proceeding on grounds different from those alleged by the trustee in her complaint and argued by her in her motion for summary judgment and in opposition to Lichen's cross-motion for summary judgment. Lichen also contends the fees and costs incurred, a total of $55,000, are disproportionate in light of the amount recovered for the estate, $120,000.

Lichen does not challenge the hourly rates charged by Counsel's attorneys, only the amount of time spent in the litigation. The court is familiar with the issues raised in the litigation, which were complex, unusual, and difficult. Indeed, the court, after issuance of a six-page ruling, invited supplemental briefing, which both parties completed. The court notes that Counsel assigned the bulk of the work in the litigation to the attorneys billing at the lower end and midpoint in the

range of hourly rates billed by its attorneys, rather than to its highest-billing attorney who worked on the case. Thus, of the $50,259 in fees challenged by Lichen, $41,845 was incurred by attorneys billing at $175 and $275 per hour, respectively. This represented an exercise of reasonable billing judgment.

Lichen has cited no authority for the proposition that an attorney's fees should be dependent on the outcome of litigation, and the court finds no basis on which to conclude that Counsel's fees should be reduced simply because the court's resolution of the dispute depended on an issue not raised by the trustee, a circumstance that occurs in bankruptcy cases from time to time. Such a Monday-morning quarterback approach to fee applications would result in attorney's fees being reduced or disallowed on a wholesale basis, especially for attorneys who end up on the losing side. Indeed, in this case, the court did not base its decision on the positions advanced by Lichen, yet the court would not for that reason conclude that the fees billed by its attorneys were not reasonable.

The questions the court is to consider, which are raised by Lichen's objection, are whether Counsel's services were necessary to the administration of the case or beneficial at the time they were rendered toward the completion of the case (§ 330(a)(3)(C)) and whether the time spent was reasonable in light of the complexity, importance, and nature of the problem, issues, and tasks addressed (§ 330(a)(3)(D)). The court finds that Counsel's work in the litigation was helpful to the court's understanding and analysis of the issues. The positions advanced by the trustee were in no way unreasonable or poorly prosecuted. The time spent was not unreasonable in light of the complexity of the issues and the importance of the litigation. (The litigation was essentially the whole ballgame – if the trustee had lost or had failed to prosecute it, all the disputed funds would have gone to Lichen as a secured creditor and nothing would have remained for unsecured creditors.) In short, Counsel's services were necessary and beneficial at the time they were rendered toward the completion of the case. The fact that the court ultimately based its ruling on an issue the trustee had not expressly raised is not a basis for reducing the fees Counsel, in the court's view, legitimately billed. Finally, the court finds that the fees requested, $54,287.59, are not unreasonably disproportionate to the results achieved, $120,000, given the complexity and difficulty of the issues involved and the amount of time required. Accordingly, the motion will be granted.

The court will hear the matter.

8.	14-26632-D-7	PATRICIA SALOMON	MOTION TO DISMISS ADVERSARY
	14-2280	ADR-1	PROCEEDING
	KAMARA V. SALOMON		10-27-14 [8]

9. 14-30237-D-7 BETTY OLSEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
PBL-1 — 10-23-14 [9]
TCF NATIONAL BANK VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

10. 12-30140-D-12 PAUL/BETTY DAVIS — MOTION FOR CONTEMPT
DF-4 — 11-2-14 [63]

Final ruling:

This motion was resolved by a stipulation and order entered November 25, 2014. As a result, this matter is removed from calendar. No appearance is necessary.

11. 14-30144-D-7 JUAN APOLONIO — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-23-14 [16]
TOYOTA LEASE TRUST VS.

Final ruling:

This case was dismissed on October 28, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

12. 14-30244-D-7 JOSE/AURORA BONILLA — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 11-6-14 [12]
ALLY FINANCIAL VS.

13. 14-27645-D-7 BETSY WANNAKUWATTE
PD-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-14 [47]

This matter will not be called before 10:30 a.m.

14. 14-25148-D-11 HENRY TOSTA
MF-20

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ, LLP FOR MATTHEW J. OLSON, DEBTOR'S ATTORNEY(S)
11-5-14 [277]

Tentative ruling:

This is the application of Macdonald Fernandez, LLP ("Counsel") for a first interim allowance of compensation for services rendered as bankruptcy counsel for the debtors-in-possession in these substantively consolidated cases. No party-in-interest has filed opposition. However, the court has an independent duty under § 330 of the Bankruptcy Code to review all requests for compensation and to determine their reasonableness. In re Eliapo, 298 B.R. 392, 405 (9th Cir. BAP 2003). For the following reasons, the application will be granted as set forth below.

Counsel seeks approval of fees in the amount of $70,297.50 and costs of $7,999.21, for a total of $78,296.71. A relatively small portion of the charges billed by law clerk Kelley H. Jones, at $150 per hour, appear to be for services that were clerical in nature, and therefore, not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). The court recognizes Ms. Jones has a law degree and has applied for admission to the California Bar, that she has over ten years of experience preparing bankruptcy petitions, and that her experience includes judicial internships and externships, as well as significant experience as a paralegal and legal assistant. However, that does not change the fact that some of the services for which she has billed are services routinely performed by persons without those qualifications – those services were entering information into the Best Case bankruptcy software and electronically submitting documents to the U.S. Trustee's office (billed independently of gathering and reviewing the documents). As a result, the court will disallow the following charges: 6/2/14 – 0.6 hr., $90; 6/4/14 – 3.5, $525; 6/9/14 – 2.0, $300; a second 6/9/14 entry – 2.0, $300; 6/10/14 – 1.0, $150; 6/10/14 – 0.7, $105; and 8/6/14 – 0.6, $90, a total of $1,560. [1]

As a result of the above, the court intends to allow the requested compensation less the $1,560. The court will hear the matter.

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1 Some of the services included in these charges may have been compensable; however, the time spent was "lumped" together. That is, the amount billed includes services that were secretarial in nature and services that were not, without distinguishing between the two; thus, the total amounts billed will be disallowed.

15. 14-25148-D-11 MF-21 — HENRY TOSTA — MOTION FOR COMPENSATION FOR BAUDLER AND FLANDERS, ACCOUNTANT(S) 11-5-14 [282]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and the moving party is to submit an appropriate order. No appearance is necessary.

16. 12-29949-D-7 HWW-4 — RICHARD/JEANNE LOTT — MOTION TO AVOID LIEN OF HOUSEHOLD FINANCE CORPORATION OF CALIFORNIA 10-24-14 [75]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

17. 12-29949-D-7 HWW-5 — RICHARD/JEANNE LOTT — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A. 11-5-14 [86]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

18. 12-29949-D-7 HWW-6 — RICHARD/JEANNE LOTT — MOTION TO AVOID LIEN OF RIVERWALK HOLDINGS, LTD 11-5-14 [90]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

19. 14-27950-D-7 KRYSTAL GILLASPIE — MOTION TO AVOID LIEN OF ARROW FINANCIAL SERVICES
ALB-1 — 10-23-14 [17]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Arrow Financial Services ("Arrow"). The motion will be denied for the following reasons. First, the moving party failed to serve Arrow in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Arrow (1) through the attorneys who obtained Arrow's abstract of judgment; and (2) at two different street addresses, but with no attention line. The first method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there is no evidence the attorneys who obtained Arrow's abstract of judgment are authorized to accept service of process on Arrow's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

Second, the notice of hearing does not include the cautionary language required by LBR 9014-1(d)(3); that is, it does not advise the potential respondent that the failure to file timely written opposition may result in the motion be resolved without oral argument and the striking of untimely written opposition.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

20. 10-40751-D-7 DAVID/CATHERINE PETERS — MOTION TO WAIVE FILING FEE
DMW-2 — 10-30-14 [136]

21. 13-24251-D-7 LARRY/LAURA HAMILTON — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG TRUSTEE'S ATTORNEY(S)
HCS-2 — 10-29-14 [51]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

22. 14-30457-D-7 SARAH ALLPRESS — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-5-14 [11]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

23. 09-29162-D-11 SH-284 SK FOODS, L.P. — CONTINUED OBJECTION TO CLAIM OF STOUGHTON DAVIDSON ACCOUNTANCY CORPORATION, CLAIM NUMBER 123
7-22-14 [5021]

Final ruling:

The hearing on this objection is continued to December 17, 2014 at 10:00 a.m. per a stipulated order. No appearance is necessary on December 3, 2014.

24. 13-35762-D-12 MF-14 JOSE DASILVA — MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ LLP FOR MATTHEW J. OLSON, DEBTOR'S ATTORNEY(S).
11-5-14 [174]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

25. 11-28863-D-7 CWC-5 AQUA POOL & SPA, INC. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RICHARD LEE TOWNSEND, DANA SUE TOWNSEND, AND THE TOWNSEND FAMILY TRUST
11-5-14 [89]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

26. 14-29370-D-7 SDB-1 — MICHAEL BRUCE — MOTION TO AVOID LIEN OF CACH, LLC
10-23-14 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

27. 14-30870-D-11 — SKANDIA FAMILY CENTER, INC. — STATUS CONFERENCE RE: VOLUNTARY PETITION
11-1-14 [1]

Tentative ruling:

This is the initial status conference in this chapter 11 case. The court does not ordinarily issue tentative rulings for chapter 11 status conferences; however, the court has an initial concern about this case.

By the terms of the Order to (1) File Status Report; and (2) Attend Status Conference (the "Scheduling Order"), the debtor was required to serve the Scheduling Order on, among others, the holders of the 20 largest unsecured claims. However, the debtor failed to serve Mike Tannen and Scott Vanpelt, who were added to the debtor's Schedule F by amendment filed November 20, 2014. Tannen and Valpelt are among the 20 largest unsecured creditors in the case; in fact, they are the largest and third largest, respectively, and thus, were required to be served. The debtor also failed to serve its status report on Tannen and Vanpelt, as also required by the Scheduling Order. The court will hear this matter as scheduled, on December 3, 2014. However, the court intends to continue the hearing and require the debtor to file a notice of continued status conference and to serve it, together with the status report and the Scheduling Order, on Tannen and Valpelt.

28. 14-27182-D-7 ALF-1 — JASON BRAGA — MOTION TO COMPEL ABANDONMENT
11-6-14 [15]

29. 14-27182-D-7 ALF-2 — JASON BRAGA — MOTION TO COMPEL ABANDONMENT
11-6-14 [20]

30. 11-36184-D-7 HCS-2 — RAJ KAMAL CORPORATION — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S) 10-27-14 [308]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

31. 11-22685-D-7 SMW-1 — BLUE RIBBON STAIRS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-28-14 [1230]
GARY STONE, INC. VS.

32. 12-41497-D-7 JRR-3 — KELLEY HODGSON — MOTION FOR COMPENSATION FOR JOHN R. ROBERTS, CHAPTER 7 TRUSTEE 10-28-14 [61]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

33. 14-23397-D-7 PPR-1 — MICHAEL ANTHONY/MARIA ORTIZ — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-3-14 [24]
BANK OF AMERICA, N.A. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on October 28, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

34. 14-25816-D-11 DEEPAL WANNAKUWATTE
KO-1
COMMUNITY 1ST BANK VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-19-14 [268]

This matter will not be called before 10:30 a.m.

35. 14-29126-D-7 RUTH THOMPSON
KRO-1
AUGUST D. GULLANS AND
PAULINE B. GULLANS VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-10-14 [18]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the property is not listed on the debtor's Statement of Intentions and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

36. 14-30241-D-7 JOANN SPRINGER
PRK-1
CAMPANILE TRUST #6574 VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-14 [16]

37. 14-29843-D-7 ROBERT OATIS
CJO-1
U.S. BANK TRUST, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-14-14 [11]

38. 14-27645-D-7 BETSY WANNAKUWATTE
KO-1
COMMUNITY 1ST BANK VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-19-14 [75]

This matter will not be called before 10:30 a.m.

39. 14-25148-D-11 HENRY TOSTA
MF-24

MOTION TO EXPAND THE SCOPE OF EMPLOYMENT AND RETENTION OF RONALD VAN LEACHMAN AS SPECIAL COUNSEL
11-12-14 [303]

40. 14-25148-D-11 HENRY TOSTA
MF-22

MOTION TO EMPLOY THOMAS H. TERPSTRA AS SPECIAL COUNSEL
11-7-14 [287]

41. 14-30158-D-7 CRISTINA NASRAWI
SR-1
1939 AUBURN BLVD., LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-19-14 [19]

42.	14-30562-D-7 TOG-1	GILBERTO TAGUJA AND TERESA BAZAN	MOTION TO COMPEL ABANDONMENT 11-12-14 [13]

Tentative ruling:

This is the debtors' motion to compel the abandonment of debtor Gilberto Tajuga's trucking business known as GTA Transport, a sole proprietorship, and its assets. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion makes representations that appear to be untrue. First, the motion lists the business assets as including a 2001 Freightliner truck with sleeper "worth $15,000, subject to security interest," whereas according to the debtors' Schedule D, they have no secured creditors. The court notes that the supporting declaration of debtor Gilberto Taguja does not include the words "subject to security interest"; it merely states that the truck is "worth $15,000." With that one exception, the asset list is identical in the motion and the declaration. Thus, the court must question why the debtors' counsel included those additional words in the motion, and whether he knew at the time they were, according to Schedule D, not true.

Second, the motion states that the debtors have exempted the assets that are the subject of the motion. The debtor's declaration makes the same representation. However, the debtors' Schedule C shows that, although they have claimed as exempt tools of the trade they value at $650 and a business known as GTA Transportation they value at $500, they have not claimed the $15,000 Freightliner as exempt. Thus, the court questions the reliability of the debtor's testimony and, again, the good faith of the debtors' counsel in including these inaccurate representations in the motion and declaration.

Because the $15,000 Freightliner is, according to the debtors' schedules, which were signed under oath, unencumbered and not claimed as exempt, the debtors have failed to make a prima facie showing they are entitled to the relief requested, as required by LBR 9014-1(d)(6), and as to that asset, the court intends to deny the motion.

Finally, the court has a concern about another remark made in the motion. The motion states: "Debtor has exempted the above referenced business assets that are the subject of this Motion. Debtor understands that, if for any reason, it is determined that he is not qualified to claim those exemptions, he will pay the Chapter 7 Trustee the amount of any exemption stated that is not eligible to claim." Motion to Compel Abandonment, filed Nov. 12, 2014, at 2:18-21. That is not how abandonment works. Once an asset is abandoned, "the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divestiture of all of the estate's interests in the property." 5 Collier on Bankruptcy ¶ 554.02[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Thus, contrary to the representation in the motion, once property is abandoned, the trustee has no ability to compel the debtor to pay for it, whether it was properly claimed as exempt or not.

The court will hear the matter.

43.	13-35066-D-7 JWR-1	JOAN POTTERTON	CONTINUED MOTION FOR COMPENSATION FOR JOHN W. REGER, CHAPTER 7 TRUSTEE(S) 10-22-14 [64]