

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 12, 2018 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.

1.	18-25705-D-7 DMW-1	MARC/LAURA BONHAM	MOTION TO SELL 11-13-18 [17]
----	-----------------------	-------------------	---------------------------------

2.	18-25811-D-11	JLM ENERGY, INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-13-18 [1]
----	---------------	------------------	--

3. 17-24417-D-12 JERRY WATKINS MOTION TO DISMISS CASE
JPJ-2 10-30-18 [82]

4. 18-23919-D-7 TIFFIANY MCINTYRE MOTION FOR RELIEF FROM
PE-1 AUTOMATIC STAY
ESA MANAGEMENT, LLC VS. 11-14-18 [41]

Final ruling:

The certificate of service filed by moving party in support of this motion states "I hereby certify that the foregoing was electronically filed with the U.S. District Bankruptcy Court on November 14, 2018, and served upon all parties who have appeared in this matter and registered with EC via the court's electronic filing system." This document is inadequate for the following reasons: (1) it does not contain the case caption (see LBR 9004-2(b)(5) and (e)); (2) it does not specify what documents have been served (see LBR 9004-2(e)(2)); (3) it is not signed under oath as required by 28 U.S.C. § 1746; and (4) it does not indicate on its face that the moving parties have complied with LBR 7005-1(d)(1). Pursuant to that rule, service by electronic means shall be accomplished by transmitting an e-mail which includes as a PDF attachment the document served, with the words "Service Pursuant to FRCivP5," along with the case number and title of the document served in the subject line of the e-mail. The proof of service in this case indicates that the case trustee and debtors' counsel were served "by electronic means through the Court's ECF program." This description is unclear. It could mean that the moving parties relied on the notice of electronic filing sent automatically by the CM-ECF system whenever activity occurs in a case rather than with the procedure required by LBR 7005-1(d)(1). As a result of these procedural defects, the motion will be denied by minute order.

5. 14-25820-D-11 INTERNATIONAL STATUS CONFERENCE RE: MOTION TO
15-2122 MANUFACTURING GROUP, INC. EXTEND TIME AND/OR MOTION FOR
IWC-4 SANCTIONS
MCFARLAND V. CARTER ET AL 10-17-18 [153]

6. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-27 RICHARD TSAI, CLAIM NUMBER 13-1
9-24-18 [460]

Final ruling:

This matter has been resolved by stipulation of the parties. As such, the matter is removed from calendar. No appearance is necessary.

7. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-28 MINDER CHENG, CLAIM NUMBER 18-1
9-24-18 [463]

Final ruling:

This objection has been resolved by stipulation of the parties. As such, the objection is removed from calendar as moot. No appearance is necessary.

8. 17-20731-D-11 CS360 TOWERS, LLC MOTION TO EMPLOY DEVELOPMENT
DB-31 SPECIALISTS, INC. AS FINANCIAL
ADVISER
11-14-18 [500]

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

9. 18-20932-D-7 RICHARD SANDOVAL AMENDED MOTION FOR RELIEF FROM
NLL-2 AUTOMATIC STAY
M&T BANK VS. 11-2-18 [83]

Final ruling:

Per stipulation of the parties the hearing on this motion is continued to January 9, 2019 at 10:00 a.m. No appearance is necessary on December 12, 2018.

10. 18-24932-D-7 RANDALL/PENNEY GOODWIN MOTION TO EMPLOY BAIRD BROWN AS
DNL-3 SPECIAL COUNSEL
11-1-18 [40]

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 to employ Baird Brown as special counsel on a contingency fee basis is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

11. 17-23436-D-7 RENEE DRUSYLLA MOTION TO COMPEL AND/OR MOTION
17-2163 PGM-1 FOR COMPENSATION FOR PETER G.
TORRES V. DRUSYLLA MACALUSO, DEFENDANT'S ATTORNEY
11-7-18 [66]

Tentative ruling:

This is the defendant's motion (1) to compel the plaintiff to answer interrogatories and respond to a request for production of documents that were served on September 20, 2018; (2) to deem a request for admissions as admitted; and (3) for attorney's fees of \$2,250 allegedly incurred in bringing the motion. 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 will be denied for two independent reasons.

First, pursuant to the court's Scheduling Order filed August 30, 2018, the discovery bar date in this case is December 10, 2018. By the time of the hearing on this motion, the bar date will have passed. The discovery bar date is defined in the Scheduling Order to mean that "any disputes relative to discovery shall have been resolved by appropriate order, if necessary, and, where discovery has been ordered, compliance with the order has been achieved in all respects."¹ As the motion was not set for hearing until after the close of discovery and discovery cannot be ordered and the order complied with before the close of discovery,² the motion will be denied.

The motion will be denied for the additional independent reason that the moving party has failed to satisfy the meet and confer requirement of FRCP 37(a)(1), discussed in this court's ruling in Sanchez v. Wash. Mutual Bank (In re Sanchez), 2008 Bankr. LEXIS 4239, 2008 WL 4155115 (Bankr. E.D. Cal. 2008), and the cases cited therein. (The Scheduling Order drew the parties' attention to the Sanchez decision and indicated the court expected the parties to comply with it.) The only so-called evidence in this regard is the declaration of the debtor's attorney, who testifies (1) he had his legal assistant call the plaintiff and leave voicemail messages for her; and (2) he and his legal assistant wrote to the plaintiff twice. The testimony about what counsel's legal assistant was told to do and what he did is hearsay and the court will not consider it except to the limited extent discussed below.

The written correspondence of counsel (and his legal assistant, if the latter had been submitted in admissible form) is far from sufficient to satisfy the meet and confer requirement. Counsel's letter to the plaintiff stated the plaintiff had failed to respond to the discovery requests, and admonished her: "Should you fail to provide a response to our office within seven (7) days after the date of this

letter, our office will proceed with filing a motion to compel and request for sanctions to include a request for attorney's fees; no further extensions to respond to the Set One of the Discovery Requests shall be granted." The legal assistant's email noted the plaintiff had not responded either to the discovery requests or to counsel's letter and stated, "we are prepared to file a Motion to Compel . . .," adding, "We will withdraw the motion if/when, prior to the hearing, we receive discovery responses from you that are non-evasive, complete, and otherwise satisfactory." Neither the ultimatum in counsel's letter nor the offer to withdraw the motion after-the-fact upon receipt of what the defendant's counsel considered satisfactory responses comes anywhere close to satisfying the requirement of a sincere effort to meet and confer in good faith, as discussed in Sanchez.

It is also significant, although not dispositive, that this adversary proceeding was filed against the defendant on August 25, 2017, over a year before the status conference at which the court set the discovery bar date, but the discovery requests that are the subject of this motion are all titled "first" request or "set one." This implies no discovery was attempted until over a year after the case was filed. The defendant has had counsel from at least as early as September 20, 2017, when her then-counsel filed a motion to dismiss. Her then-counsel sought to withdraw in April of this year; following a continuance of the hearing, the motion was granted on June 1, 2018. The defendant's new attorney filed the July 30, 2018 discovery plan proposing the December 10, 2018 date for close of discovery. The defendant has failed to make a showing of diligence in pursuing discovery during most of the very long time that was available to her.

For the reasons stated, the motion will be denied. The court will hear the matter.

-
- 1 In a discovery plan filed July 30, 2018, the defendant proposed December 10, 2018 as the date for close of discovery and recognized that would mean the date for "Close of all discovery, including hearing of motions on discovery."
 - 2 The Scheduling Order put the parties on notice that requests for relief from or modification of the scheduling order are not favored and would ordinarily be denied unless the moving party makes a strong showing of diligence in complying with the order. Although the motion mentions the discovery bar date of December 10, 2018, the moving papers make no attempt to show diligence in completing discovery by that date.

12. 18-24836-D-7 EDDIE/JENNIFER RAINWATER MOTION TO AVOID LIEN OF CAPITAL
JBA-1 ONE BANK, (USA), N.A.
11-7-18 [25]

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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

13. 18-27136-D-11 ARCADE OLD SAC LLC STATUS CONFERENCE RE: VOLUNTARY
PETITION
11-13-18 [1]

Final ruling:

This case was dismissed on November 30, 2018. As a result the status conference is removed from calendar as moot. No appearance is necessary.

14. 17-22637-D-7 QUACKENBUSH'S PRODUCTION MOTION FOR COMPENSATION FOR
DMW-3 GOLDSMITHS, INC., A GABRIELSON & COMPANY,
ACCOUNTANT(S)
11-8-18 [30]

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.

15. 18-26540-D-12 LINDA DYSERT CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-17-18 [1]

16. 18-26540-D-12 LINDA DYSERT MOTION TO DISMISS CASE
JPJ-1 11-8-18 [19]

17. 18-26543-D-7 EILEEN OQUENDO

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
10-17-18 [5]

18. 15-23746-D-7 GORDON BONES
GB-2

MOTION FOR STAY PENDING APPEAL
10-12-18 [175]

Tentative ruling:

This is the amended motion of debtor Gordon Glen Bones (the "debtor") for a stay pending appeal and for an order as to the location and date the debtor will be allowed to refile a bankruptcy petition as an alternative to appeal. Creditors Melissa Joseph and Julie Ana DeSilva (the "creditors") have filed opposition. For the following reasons, the motion will be denied.

On September 7, 2018, the debtor filed a motion for a stay pending appeal showing a hearing date of October 17, 2016 (two years ago). He did not file a notice of hearing; thus, the matter was not set for hearing. On September 28, 2018, the creditors filed opposition, noting the incorrect hearing date and asserting the motion was incomprehensible and cited no authority. On October 12, 2018, the debtor filed a notice of amended motion and amended motion for a stay pending appeal, which is the present motion. The same day, the debtor filed a withdrawal of the original motion, stating he was incorporating the former motion in the amended motion "filed this same day and set for hearing on December 12, 2018." On November 28, 2018, the creditors filed opposition, stating the motion is facially meritless and adding the creditors have now obtained a judgment against the debtor in their long-standing state court action. The creditors stated they would soon file a motion to confirm the judgment as nondischargeable. (There is a pending adversary proceeding.)

On December 3, 2018, the debtor filed a document entitled "Withdrawal of Amended Motion for Stay Pending Appeal Set for December 12, 2018 to the Continued and Re-Set Date of February 13, 2019." The debtor also filed a copy of an email exchange in which, on November 26, the debtor wrote to the creditors' attorney stating, "I will continue the December 12, 2018 hearing in the Eastern District to an available Wednesday court date in January or February. The primary reason is that I need to Notice the IRS in Cincinnati, Ohio as my primary creditor of such a hearing, and the Southern District Indiana Bankruptcy court." The debtor asked the creditors' attorney if he had any unavailable dates in those months. The creditors' attorney responded with a list of dates he would be unavailable. He did not indicate the creditors consented to the continuance.

The debtor did not have the right to unilaterally "withdraw" the motion (Fed. R. Civ. P. 41(a)(1) and (2), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c)). Nor did he have the right to continue the hearing, either unilaterally or with the creditors' consent. LBR 9014-1(j). The court construes the "withdrawal" filed December 3, 2018 as a request for continuance and denies it.

In determining whether to stay an order, the factors the court is to consider are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Leiva-Perez v. Holder, 640 F.3d 962, 964 (9th Cir. 2011), quoting Nken v. Holder, 556 U.S. 418, 425-26 (2009). The court is to apply these factors using a sliding scale or general balancing approach. Leiva-Perez, 640 F.3d at 966. Thus, "a stronger showing of one element may offset a weaker showing of another." Id. 964. The burden of proof is on the moving party. In re Irwin, 338 B.R. 839, 843 (E.D. Cal. 2006). The debtor here has failed to make a sufficient showing as to any of the four factors.

The court accords the first factor a great deal of weight here. The order the debtor appeals from is this court's order filed September 7, 2018 (the "Order") granting the creditors' motion to transfer the debtor's chapter 13 case then pending in the Bankruptcy Court for the Southern District of Indiana (the "Second Indiana Case") to this court and for dismissal of that case with a 180-day bar to refile in any district, pursuant to Bankruptcy Code § 109(g). After the Order was filed, the Second Indiana Case was transferred to this court, where it was assigned Case No. 18-26046 and dismissed by order filed September 27, 2018 with a 180-day bar to refile in any district. The debtor did not appeal from that order.

The same scenario played out in the Indiana court and in this court in 2016. The debtor filed a chapter 13 petition in the bankruptcy court for the Southern District of Indiana on June 8, 2016 (the "First Indiana Case"). This court granted the creditors' motion to change venue of the First Indiana Case to this court; the case was transferred to this court and then dismissed, with a 180-day bar to refile. The debtor appealed from the order transferring venue but did not appeal from the order dismissing the First Indiana Case after it had been transferred to this court. The Ninth Circuit Bankruptcy Appellate Panel ("BAP") held, "The dismissal order was never appealed, so granting leave to appeal the venue transfer order would not grant any effective relief to appellant [the debtor]." Bones v. Joseph, BAP No. CC-16-1268 (9th Cir. BAP Nov. 2, 2016). Accordingly, the BAP dismissed the appeal.

Similarly, here, it appears likely the debtor's appeal from the order transferring the Second Indiana Case to this court will be dismissed because the debtor failed to appeal from the order dismissing that case after it had been transferred to this court. Thus, the court concludes the debtor has not made a strong showing he is likely to succeed on the merits of his appeal.

Nor has the debtor made any showing that he will be irreparably injured absent a stay. Indeed, he appears to believe he will not be injured at all absent a stay, as evidenced by his multiple attempts to reschedule the hearing on a motion he originally filed over five months before the date in February of 2019 he has most recently selected as his preferred date. In contrast, issuance of a stay is likely to substantially injure the creditors, who have been trying for several years to conclude their state court action against the debtor in the face of his repeated attempts to avoid their discovery requests and to stay the litigation by his repeated bankruptcy filings, as the court has previously found. Finally, the public interest lies in the expeditious and economical resolution of disputes, not in furthering the debtor's delaying tactics.

For the reasons stated, the motion will be denied. The debtor requests this court's "guidance" and "direction" as to when and in what court he may file another

bankruptcy petition so as "to avoid a third Grant of a Motion to Change Venue." The request will be denied as an improper request for an advisory opinion. The court will hear the matter.

19. 17-23746-D-7 RONALD BRADLEY MOTION FOR RELIEF FROM
AP-2 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 10-31-18 [57]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

20. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR EXAMINATION OF
12-2314 GJH-1 JUDGMENT DEBTOR
BURKART V. LAL 11-12-18 [126]

**ADVERSARY PROCEEDING CLOSED:
05/13/2015**

21. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION TO COMPEL
DNL-3 ABANDONMENT
10-30-18 [685]

The court will use this hearing as a status conference.

22. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION TO COMPEL
DNL-4 ABANDONMENT
10-30-18 [690]

The court will use this hearing as a status conference.

23. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION FOR RELIEF
DNL-5 FROM AUTOMATIC STAY
SINCLAIR PARTNERS, LLC VS. 10-30-18 [695]

The court will use this hearing as a status conference.

24. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION FOR RELIEF
DNL-6 FROM AUTOMATIC STAY
ECS BIG TOWN, LLC VS. 10-30-18 [701]

The court will use this hearing as a status conference.

25. 18-22453-D-7 ECS REFINING, INC. MOTION FOR COMPENSATION BY THE
FWP-29 LAW OFFICE OF FELDERSTEIN,
FITZGERALD, WILLOUGHBY AND
PASCUZZI, LLP FOR PAUL J.
PASCUZZI, TRUSTEE'S ATTORNEY(S)
11-14-18 [782]

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 moving party is to submit an appropriate order. No appearance is necessary.

26. 18-22453-D-7 ECS REFINING, INC. MOTION FOR COMPENSATION FOR W.
FWP-30 DONALD GIESEKE, CHAPTER 11
TRUSTEE
11-14-18 [788]

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 §§ 326 and 330(a). As such, the court will grant the motion and moving party is to submit an appropriate order. No appearance is necessary.

27. 18-22453-D-7 ECS REFINING, INC. MOTION FOR COMPENSATION FOR
FWP-31 SIERRACONSTELLATION PARTNERS,
LLC, FINANCIAL ADVISOR(S)
11-14-18 [793]

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 moving party is to submit an appropriate order. No appearance is necessary.

28. 15-28170-D-7 KEVIN ARMSTEAD MOTION TO ABANDON
DMW-2 10-13-18 [59]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the moving party is to submit an appropriate order. No appearance is necessary.

29. 11-46172-D-12 VIRENDA/SUMAN MISHRA MOTION FOR SUMMARY JUDGMENT
17-2156 PGM-3 AND/OR MOTION FOR PARTIAL
SUMMARY JUDGMENT
MISHRA ET AL V. WELLS FARGO
BANK, N.A. 10-31-18 [122]

Final ruling:

Pursuant to the moving parties' notice of continued hearing, this hearing is continued to January 3, 2019 at 10:00 a.m.

30. 18-26784-D-7 ESAU LLAMAS CASTRO MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
GATEWAY ONE LENDING & 11-14-18 [9]
FINANCE 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 he 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.

31. 18-24896-D-7 HENRY/DESIREE ADAME MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
11-6-18 [19]

32. 18-26496-D-7 HELEN OWENS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
10-15-18 [5]

33. 17-23101-D-7 SHANNON ANDERSON ORDER TO SHOW CAUSE
17-2153 11-20-18 [33]
STATE COMPENSATION INSURANCE
FUND V. ANDERSON

Final ruling:

This adversary proceeding has been dismissed by order signed December 3, 2018. As a result the order to show cause will be discharged by minute order without further action taken by the court. No appearance is necessary.

34. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-27 RICHARD TSAI, CLAIM NUMBER 13-1
9-24-18 [460]

Final ruling:

Item no. 34 is removed from calendar as it is a duplicate of Item no. 6.

35. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-28 MINDER CHENG, CLAIM NUMBER 18-1
9-24-18 [463]

Final ruling:

Item no. 35 is removed from calendar as it is a duplicate of Item no. 7.

36. 18-24932-D-7 RANDALL/PENNEY GOODWIN CONTINUED OBJECTION TO DEBTOR'S
DNL-2 CLAIM OF EXEMPTIONS
10-24-18 [35]

Final ruling:

This objection has been resolved by the order entered on December 5, 2018. No appearance is necessary.

37. 18-22453-D-7 ECS REFINING, INC. MOTION TO PAY
WFH-10 11-28-18 [822]

Tentative ruling:

This is the trustee's motion to pay pre- and post-petition claims of e-waste collectors. The court is not prepared to consider the motion at this time for several reasons. First, the five-page label matrix attached to the proof of service appears to be from a different case. Second, the motion appears to concern a use of property of the estate other than in the ordinary course of business, and thus, the moving party should have given 21 days' notice of the hearing (Fed. R. Bankr. P. 2002(a)(2)) rather than the 14 days' given. Third, the notice of hearing provides inconsistent information. Initially, it says the motion is brought pursuant to LBR 9014-1(f)(1) but then it says that if a party does not want the court to grant the motion or wants the court to consider its views, it must appear at the hearing and is not required to file written opposition. The notice goes on to state, however, that any opposition must specify whether the responding party consents to the resolution of disputed issues pursuant to FRCP 43(c), and if not, shall include a separate statement identifying each disputed issue and the particular portions of the record demonstrating that an issue is both material and in dispute.

In the court's view, it is not appropriate to include that requirement where the notice specifically does not require the filing of written opposition - the additional language is confusing. Finally, the notice states that "you or your attorney must take all steps referenced above and appear at the hearing" (emphasis added), whereas for a motion brought on fewer than 28 days' notice, nothing is required other than appearing at the hearing.

For the reasons stated, the court intends to deny the motion. In the alternative, the court will consider continuing the hearing and requiring the moving party to remedy these service and notice defects. The court will hear the matter.

38. 16-21659-D-7 TRONG NGUYEN
NOS-7

MOTION TO SELL AND/OR MOTION
APPROVE OVERBIDDING PROCEDURES,
MOTION TO PAY ADMINISTRATIVE
EXPENSES
11-21-18 [176]

Tentative ruling:

This is the trustee's motion to sell 100% of the ownership interest in World of Good Tastes, Inc., which includes the estate's interest and a minority shareholder's interest, to La Bou Fresh, Inc. for \$90,000, subject to overbidding. The court is not prepared to consider the motion at this time for several reasons. First, the notice of hearing states that the motion is filed pursuant to LBR 9014-1(f)(1), but rather than stating that written opposition must be filed at least 14 days prior to the hearing date, it states that opposition must be filed on or before May 10, 2017. Second, the notice of hearing, which is the only document served on creditors who have not requested special notice, states that prior to the hearing, anyone wishing to overbid shall submit proof of available funds and a deposit in the form of "a cashier's check in the amount of \$_____" payable to the trustee. It also states "[a]ny initial overbid must be for at least \$_____" and the trustee requests that successive overbids be in increments of "at least \$_____." These blanks may have served to inhibit potential overbidders.

Third, the notice of hearing states the buyer "will accept the Business and the assumed liabilities," but does not state what those liabilities are, either individually or in total. This omission may also have inhibited potential overbidders. Finally, the moving papers provide no indication to the court or creditors as to what the net benefit to the estate from the sale is likely to be. Thus, they do not provide sufficient information to allow parties-in-interest to determine whether to oppose the motion or the court whether to grant it.

For the reasons stated, the court intends to deny the motion. In the alternative, the court will consider continuing the hearing and requiring the moving party to remedy these notice defects. The court will hear the matter.

39. 18-26372-D-7 BOOTLEGGERS OLD TOWN CONTINUED MOTION TO COMPEL
RAP-1 TAVERN & GRILL, INC. ABANDONMENT
11-8-18 [19]

40. 18-26372-D-7 BOOTLEGGERS OLD TOWN CONTINUED MOTION TO COMPEL
RAP-1 TAVERN & GRILL, INC. ABANDONMENT
11-8-18 [19]

Final ruling:

This item is a duplicate of Item no. 39 above and is thus removed from calendar.

41. 18-22878-D-7 DENNIS/SANDRA HARRISON MOTION TO RECONSIDER AND/OR
GSJ-2 MOTION FOR DECLARATORY RELIEF
11-27-18 [35]

Tentative ruling:

This is the debtors' motion for reconsideration of an order denying approval of a reaffirmation agreement with 21st Century Mortgage Corporation, for declaratory relief, and for attorney's fees. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, if no appearance is made on behalf of 21st Century, the court intends to deny the motion because the moving parties failed to serve 21st Century in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b).

The moving parties served 21st Century (1) at a street address with no attention line; (2) through a purported agent for service of process in Delaware. 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 was no attention line. The second method was insufficient because the Delaware Secretary of State shows no record of a registered corporation under a name beginning with "21st Century Mortgage" and there is no evidence the agent for service the moving parties served, in Delaware, is an authorized agent for service of 21st Century which, the court notes, appears to be located in Tennessee.

For the reasons stated, if 21st Century appears at the hearing, the court will hear the matter; otherwise, the motion will be denied. In the alternative, the court will consider continuing the hearing and requiring the moving party to remedy the service defect. The court will hear the matter.

42. 17-20689-D-11 MONUMENT SECURITY, INC. CONTINUED OBJECTION TO CLAIM OF
ET-27 LARRY FULKERSON, CLAIM NUMBER
14
10-15-18 [352]

Final ruling:

This is the objection of the debtor-in-possession to the claim of Larry Fulkerson, Claim No. 14 on the court's claims register. On November 30, 2018, the debtor-in-possession filed a motion to convert this case from chapter 11 to chapter 7 and the debtor-in-possession is entitled to convert the case pursuant to § 1112(a) of the Bankruptcy Code. Thus, the case either has been or will be converted and the debtor-in-possession no longer has or will no longer have standing to prosecute this objection. Accordingly, the objection will be overruled by minute order for lack of standing. No appearance is necessary.

43. 18-25693-D-7 ERIC DAVIS MOTION TO EMPLOY NICHOLAS L.
DNL-1 KOHLMAYER AS ATTORNEY(S)
11-20-18 [26]

44. 18-27559-D-11 BOB COOK COMPANY LLC ORDER TO SHOW CAUSE
12-5-18 [5]

45. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION TO REJECT LEASE OR
DNL-3 EXECUTORY CONTRACT O.S.T.
12-7-18 [407]

46. 17-20689-D-7
DNL-4

MONUMENT SECURITY, INC.

MOTION TO ABANDON O.S.T.
12-7-18 [413]