UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 17, 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.

1.	14-30903-D-7	DEBORA SCHAFFNER	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 11-3-14 [5]
2.	13-33804-D-7 BHS-3	RHONDA STIJAKOVICH-SANTILLI	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR MOTION TO SET ASIDE 11-14-14 [100]

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

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemption of a $175,000 interest in the real property at 9817 Beckenham Drive, Granite Bay, California (the "Property"), and motion for relief from this court's final order granting the debtor's motion to compel abandonment of the Property and relief from this court's final order overruling and denying an earlier similar objection and motion. The debtor has filed opposition, and the trustee has filed a reply. For the following reasons, the objection will be overruled and the motion will be denied.

The meeting of creditors in this case was concluded on January 21, 2014. Thus, in the absence of a fraudulent assertion of an exemption, the time for the trustee to object to the claim of exemptions expired on February 20, 2014. See Fed. R. Bankr. P. 4003(b)(1) and (2).[1] The trustee asserts that the debtor fraudulently claimed a homestead exemption in the Property when, according to the trustee, she did not live there on the date she filed her petition, October 25, 2013. Thus, the trustee claims, his objection is timely under Rule 4003(b)(2). As the objecting party, the trustee has the burden of proof. Fed. R. Bankr. P. 4003(c).

Based on the declaration of Joanna Mendoza submitted by the trustee, it appears to be an accurate statement that the debtor did not actually reside in the Property on October 25, 2013. However, that fact alone – which is virtually the only fact the trustee relies on – is not sufficient to establish that the debtor "fraudulently asserted the claim of exemption," as required for a finding that the trustee's objection is timely under Rule 4003(b)(2). The rule is relatively new: it was added to Fed. R. Bankr. P. 4003 by amendment in 2008 (see Advisory Committee Note (2008)), and there is almost no case law construing it. The trustee has cited no cases; the court has found only two.

In In re Petrosine, 2012 Bankr. LEXIS 4281 (Bankr. D. Alaska 2012), the court held that the trustee's objection to exemption, filed four months after the conclusion of the meeting of creditors, was timely under Rule 4003(b)(2) (at *8 n.15), finding "overwhelming evidence of concealment and bad faith" (id. at *10) and "[c]ompelling evidence of . . . fraud and deceit . . . ." Id. at *13. The debtor had failed to disclose a large number of items of jewelry on her schedules, had grossly undervalued the items she did schedule, and while incarcerated, before and after various sessions of the meeting of creditors, placed many telephone calls to a friend, asking him to retrieve her possessions out of her storage locker and "try to leave it the way it looked before." Id. at *5. The court found that the debtor's friend went to the storage locker more than once, and removed a number of items, although "we will never know" the full extent. Id. at *14.

In In re James, 498 B.R. 813 (Bankr. E.D. Tenn. 2013), on the other hand, the court found that the debtor had not fraudulently asserted an exemption in a condominium he owned with his wife as a tenant by the entirety. 498 B.R. at 823. This finding permitted the debtor to realize the full amount of the exemption he had claimed. Id. at 828. The debtor had scheduled the value of the property at $260,000, and claimed an exemption in that amount. The property was subject to a lien in the amount of $160,000. The court concluded that if the trustee could sell the property for more than $260,000, the debtor would receive the difference between $260,000 and the lien payoff amount, thereby "receiving the value of the exemption he claimed." Id. This resulted in the debtor being allowed an exemption of $100,000 (id. at 831), which was some $88,000 more than the amount the debtor was actually entitled to exempt under applicable law. Id. at 823.[2]

In James, the trustee was prompted to object to the exemption only after the

debtor's wife filed her own bankruptcy case several months after the debtor's was filed, and the trustee learned the debtor and his wife had listed the property for sale at $449,500, much higher than the value at which the debtor had scheduled it.[3] In determining the debtor had not fraudulently asserted the exemption, the court noted he had disclosed his interest in the property as a tenant by the entirety, had "made no effort to mislead the trustee about his intention to exempt his entirety interest in a valuable condominium" (498 B.R. at 822), had scheduled his and his wife's joint creditors, and had scheduled his wife as a co-obligor. The court found no evidence the debtor had independent knowledge the condo was worth more than the value at which he had scheduled it, or that he had directed his wife to delay her own filing so as to take advantage of the peculiarities of the law on tenancy by the entireties. Id. at 822-23. In short, "[t]he court [could not] find that [the debtor] withheld any information or knowingly provided any inaccurate information to the trustee." Id. at 823. The court also emphasized that the trustee chose not to investigate the value of the property, and made a conscious decision not to object to the exemption. Id.

The court did express its concern about the debtor listing the value of his exemption at $260,000, when, after deduction of joint secured and unsecured debts, the amount of the exemption he was entitled to was only $12,000, but noted the trustee did not object to the amount claimed. Thus, the court concluded: "When the court weighs an aggressive claim to an exemption against the current bankruptcy law on requirements for claiming exemptions discussed below, the trustee's awareness of the equity in the Condominium and the full disclosure of joint debt, the court does not find that the single overstatement of the value of the claimed exemption rises to the level of a fraudulent assertion of an exemption." James, 498 B.R. at 823. The "bankruptcy law" the court discussed later in the opinion was earlier case law permitting equitable theories such as a good faith requirement to extend the trustee's 30-day deadline to object to exemptions. The court concluded that the Supreme Court's decision in Taylor v. Freeland & Kronz, 503 U.S. 638 (1992), essentially foreclosed the use of equitable remedies to extend the 30-day deadline. Id. at *33-35. In Taylor, the Court held that "[the trustee] cannot contest the exemption at this time [beyond the 30-day deadline] whether or not [the debtor] had a colorable statutory basis for claiming it." Taylor, 503 U.S. at 643-44. This was so even though the parties had agreed that the debtor did not have a right to exempt more than a small portion of the proceeds of a particular lawsuit, but had claimed an exemption in all of the proceeds. Id. at 642. The James court concluded from the Taylor decision that "equitable remedies to extend the deadline to object to exemptions are severely limited, if not abrogated, if the deadline is missed." James, 2013 Bankr. LEXIS 4255, at *34.

The Taylor decision predated the promulgation of Rule 4003(b)(2); thus, the issue of a fraudulent claim of exemption was not in play. Nevertheless, the James court, in a decision specifically determined under Rule 4003(b)(2), considered Taylor as a factor, along with the debtor's "aggressive claim to an exemption" and the trustee's awareness of the equity in the property and the joint debt against it, in concluding that the debtor had not fraudulently asserted the exemption. James, 498 B.R. at 823. In short, the court agrees that despite the promulgation of Rule 4003(b)(2), Taylor is still good law. Thus, where a trustee misses the 30-day deadline for objecting, unless the debtor has fraudulently asserted an exemption, the trustee may not object, even where the debtor "did not have a good-faith or reasonably disputable basis for claiming [the exemption]" (Taylor, 503 U.S. at 643) and the trustee "apparently could have made a valid objection . . . if he had acted promptly." Id. at 642.

> Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality. In this case, despite what respondents [the debtor's state court attorneys] repeatedly told him [about what the debtor's lawsuit might be worth], [the trustee] did not object to the claimed exemption. If [the trustee] did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b). Having done neither, [the trustee] cannot now seek to deprive [the debtor] and respondents of the exemption.

Taylor, 503 U.S. at 644.[4]

In the present case, the debtor scheduled the Property, along with her other two rental properties. The trustee does not allege she undervalued any of the properties or overstated the liens against them. On her petition, the debtor gave the address of the Property as her street address and a post office box as her mailing address. On her Schedule I, she listed her monthly income as $3,400 from a "Room Mate," $3,800 from other real property (the other two properties), and $1,551 from social security. On her Schedule J, the debtor listed her mortgage payment as $2,034 and separately listed, by address, two other mortgage payments – those for the other two properties, at a total of $4,468. Thus, the Property was apparently the only one on which the rental income exceeded the amount of the mortgage payment. It was also the only one scheduled as having any equity. The debtor's rental income from the Property, $3,400 for a single-family residence, was such as could reasonably be expected to trigger an inquiry into whether the tenants were renting the entire residence or only a few rooms.

On December 3, 2013, over a year ago, the trustee conducted an initial session of the meeting of creditors, at which the debtor and her then-attorney appeared. The trustee continued the meeting to January 21, 2014, and it was concluded that day. The trustee did not seek an extension of time to object to exemptions; thus, the deadline was February 20, 2014. Yet the trustee did not file an objection until six months later, on August 18, 2014. He claimed the objection was timely under Rule 4003(b)(2) "due to the Debtor fraudulently asserting the claim of exemption." Trustee's Obj., filed Aug. 18, 2014, at 1:24. His only factual allegation in support of this contention was that the debtor had claimed a homestead exemption in property in which she did not reside on the petition date. The trustee claimed "[t]his information did not come to [his attention]" (id. at 2:12-13) until he received the debtor's 2013 tax returns, on August 6, 2014,[5] on which she had claimed the Property as a rental property for the entire year, with "zero personal days." The trustee offered an excuse for his failure to object to the exemption within the 30-day period: "The Debtor uses a Post Office Box located in Orangevale, California for all the documents provided to the Trustee, which made it impossible for the Trustee to verify the Debtor's actual home address." Id. at 2:21-23 (emphasis added).

This conclusion is unsupported and not persuasive. The trustee offers no explanation as to why, immediately after the initial session of the meeting of creditors, or before, he could not have simply taken more concrete steps to determine whether the debtor was actually living in the Property. As to the debtor's use of a post office box address, the court finds that, far from making it "impossible" for the trustee to determine her actual residence, might reasonably have been expected to put the trustee on notice he should investigate the question of her actual residence further. Moreover, the trustee was on notice from the

debtor's schedules that she was receiving $3,400 per month in rent from the Property, almost the amount of the rents on the other two properties combined. A quick Zillow search would have revealed that the Property is a four bedroom, three bath house. The amount of the rent alone might reasonably have been expected to trigger further inquiry into whether the debtor was residing at the Property along with her tenants.

Finally, the trustee claims the fact that the debtor did not actually reside at the Property on October 25, 2013 did not "come to his attention" until he received the debtor's 2013 tax returns, in August of 2014. He does not allege the debtor delayed in getting him her 2012 returns, on which, as on the 2013 returns, she had claimed the Property as a rental property for the entire year, with "zero personal days." Assuming the trustee had the 2012 returns before the expiration of the 30-day period,[6] those returns, on which the debtor claimed all three of her properties, including the Property, as rental properties for the entire year, might reasonably have been expected to trigger further inquiry into her actual residence. The trustee has not alleged he did not have the 2012 returns by the time of the 30-day deadline, or that the debtor attempted to delay providing them to him. In short, the debtor's schedules and her use of a post office box for her mail provided ample reasons for the trustee to inquire further as to the place of her actual residence, and they weigh against a finding that the debtor fraudulently asserted the homestead exemption.

The debtor's alleged reasons for claiming a homestead exemption in the Property also weigh against a finding of fraud. She states her attorney told her that "as long as [she] kept most of [her] personal belongings at [the Property], and did not reside primarily at any other home, then the court would consider [the Property] as [her] primary residence." Debtor's Decl., filed Dec. 2, 2014, at 2:6-9.

> I based my decisions on my attorney's advice that renting [the Property] to roommates/tenants and staying at various friends' homes and traveling did not preclude [the Property] from being my primary residence. Accordingly, even though I had rented out [the Property] to roommates/tenants, it was the only home that reasonably could be considered to be my primary residence. [¶] During this bankruptcy, I have had no time constraints with respect to a job or otherwise that would require me to spend any particular amount of time at a primary residence. During this bankruptcy, I have had no other residence other than [the Property].

Id. at 2:9-20. The question for the court is not whether, based on these allegations, the debtor would have prevailed on her claim of exemption if the trustee has timely objected. In fact, given the debtor's two-year lease of the property to others, reserving no right of occupancy for herself, the validity of her claim to a homestead exemption seems tenuous. In light of Taylor, however, it does not matter whether the debtor had a valid or even a colorable claim to the exemption. It matters only whether she fraudulently asserted the exemption, such that the late objection should be allowed under Rule 4003(b)(2).

In the James case, the debtor's overstatement of the value of his claim of exemption "[gave] the court pause." 498 B.R. at 823. Similarly, in this case, the debtor's testimony in response to the trustee's earlier objection to exemption that she "[has] been residing at [her] home at 9817 Beckenham, Granite Bay, California . . . continuously for all of 2012, 2013 and all of 2014 through the date of this declaration"[7] is quite troubling to this court. However, this testimony was given

not at the time the debtor asserted the claim of exemption, but almost 11 months later, when she was defending against the trustee's objection, and long after the trustee's time to object, in the absence of fraud, had run. Thus, although this testimony appears to have been inaccurate, and possibly deliberately so, it does not support a conclusion that the debtor fraudulently asserted the exemption at the time it was claimed.

To conclude, the court weighs what appears to have been an "aggressive claim to an exemption," as in the James case, against the state of bankruptcy law on claiming and objecting to exemptions, as set forth in the Taylor decision, and the debtor's disclosure of information sufficient to trigger further inquiry by the trustee. Upon consideration of the record, the court cannot conclude that the debtor fraudulently asserted the exemption at the time it was claimed.

The trustee also seeks to set aside the court's final order deeming the Property abandoned. See Civil Minute Order filed May 30, 2014. He states that his reason for not opposing the debtor's motion to compel abandonment was the lack of equity in the property, considering the claimed homestead exemption. "If the exemption was not properly taken due [to] the Debtor not being eligible for a homestead exemption . . ., then the Order granting the abandonment must be withdrawn." Trustee's Obj., filed Nov. 14, 2014, at 6:15-17. This statement mischaracterizes the issue. The issue is not whether the exemption was properly claimed, it is whether it was fraudulently claimed. As the trustee has not demonstrated the exemption was fraudulently claimed, the objection to exemption will be overruled, and there is no reason to set aside the abandonment order. Accordingly, that motion will be denied.

The court will hear the matter.

1

> Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b)(1).

> The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. . . .

Fed. R. Bankr. P. 4003(b)(2) ("Rule 4003(b)(2)").

2 Under the law of tenancy by the entireties applicable in James, the debtor was only entitled to exempt the value of the equity in the property after the deduction of joint claims, including joint secured claims and joint unsecured claims. Id. The property was subject to a joint secured claim for $160,000, and the debtor had scheduled $88,000 in joint unsecured debts. Thus, the court concluded, the debtor was entitled to a claim of exemption of only $12,000 ($260,000 - $160,000 - $88,000). Id.

3 Similarly, in this case, it appears the trustee became interested in the Property only after he attempted unsuccessfully to sell another of the debtor's properties, and after the Property had appreciated in value.

4 See also Smith v. Kennedy (In re Smith), 235 F.3d 472, 478 (9th Cir. 2000) ("In Taylor, the Supreme Court emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. . . . As a matter of policy, this should work no great hardship . . . . The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Where more information must be gathered, the meeting can be adjourned to a definite time; there is no limit on the number of adjournments. . . . Furthermore, should this process become unduly cumbersome, the trustee or creditors may simply object to any exemptions that remain un- or under-explained.")

5 The debtor had apparently had an extension to file her returns.

6 The debtor's 2012 federal tax return bears the signature of her tax preparer dated October 12, 2013, two weeks before the date she filed this case.

7 Debtor's Decl., filed Sept. 9, 2014, at 2:1-3.

3.	14-29905-D-11	RAVINDER GILL	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-2-14 [1]

Tentative ruling:

This is a continued status conference in this chapter 11 case. The court does not ordinarily issue tentative rulings for chapter 11 status conferences; however, the court has serious concerns about this case.

First, at the initial status conference, the debtor's counsel advised the court the issue of the debtor's use of the cash collateral of 7-Eleven Corporation, which had been raised in the debtor's status report and addressed in the court's tentative ruling for the initial status conference, would not be an issue because of 7-Eleven's procedures for all cash generated at the debtor's business to be deposited directly into a 7-Eleven-controlled bank account. Counsel for the debtor and Lakeview Petroleum, however, advised the court there is an issue regarding the debtor's use of the cash collateral of Lakeview Petroleum, which the parties expected to be resolved by stipulation. As of this date, there is no motion on file to approve a cash collateral stipulation or for authority to use cash collateral. The court notes that on November 18, 2014, Lakeview Petroleum filed a notice of interest in cash collateral and non-consent to the use thereof.

Further, the debtor's counsel has failed to file a motion for approval of his employment, despite the objection of the United States Trustee to such employment, filed November 3, 2013, and despite the court's indication that counsel would need to file a noticed motion. Counsel indicated at the initial status conference he had not yet filed a motion because of the press of other business in the case, and the court reminded counsel about the risks he was running, in light of In re THC Fin. Corp., 837 F.2d 389 (9th Cir. 1988), in failing to seek approval of his employment.

Finally, the court is concerned about the extensive changes made by the debtor to his Schedule B and his Statement of Financial Affairs by amendments filed

November 12, 2014. To his Schedule B, the debtor added the following assets that were not disclosed at all on his original Schedule B: accounts receivable valued at $11,006, gas pump equipment valued at $20,000, fuel inventory valued at $33,706, and a claim against Sutter Community Bank for unfair lending practices, value unknown. The court questions the debtor's good faith in submitting an original Schedule B that omitted mention of these significant assets where it should have been obvious by the triggers on the form of Schedule B – "accounts receivable," "equipment used in business," and "inventory" – that they were required to be included.

On his original and amended Statements of Financial Affairs, the debtor made the following dramatic changes to the figures he disclosed as his gross income:

	Original	Amended
YTD 2013 [2014]	$ 101,000	$ 1,811,076
2013	$ 122,281	$ 2,393,284
2012	$ 18,682	$ 1,269,985

A debtor has a duty of careful, complete, and accurate reporting in his schedules filed in the 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). Clearly, amendments to correct inaccurate or incomplete information are to be encouraged. However, when the changes made by amendment are so dramatic, especially where, as here, they disclose significant assets and income completely omitted in the original documents, they tend to call into question whether the debtor made a sincere attempt to accurately and completely report his true circumstances or whether he originally intended to conceal the true and complete information. The debtor should keep in mind as he proceeds with prosecution of this case that, in order to confirm a plan in this case, the debtor will need to persuade the court he has complied with the applicable provisions of the Bankruptcy Code (see § 1129(a)(2)), which includes the duty to accurately and completely disclose the information required by the schedules and statements filed in the case.

The court will hear the matter.

4. 14-29412-D-7 ADAM DYE — MOTION FOR RELIEF FROM AUTOMATIC STAY
JFL-1 — 11-10-14 [23]
SETERUS, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'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.

5. 12-40315-D-7 DNL-10 — OLUSEGUN/YVONNE LERAMO — MOTION FOR COMPENSATION FOR GONZALES & SISTO, LLP, ACCOUNTANT(S) 11-19-14 [255]

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.

6. 12-40315-D-7 DNL-11 — OLUSEGUN/YVONNE LERAMO — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S) 11-19-14 [266]

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.

7. 12-40315-D-7 DNL-13 — OLUSEGUN/YVONNE LERAMO — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH OLUSEGUN B LERAMO AND YVONNE IONIE LERAMO 11-19-14 [271]

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.

8. 12-40315-D-7 DNL-14 — OLUSEGUN/YVONNE LERAMO — MOTION FOR COMPENSATION FOR J. MICHAEL HOPPER, CHAPTER 7 TRUSTEE 11-19-14 [261]

Final ruling:

This 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, as that request has been modified in the trustee's supplemental declaration filed December 1, 2014, are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion as so modified. Moving party is to submit an appropriate order. No appearance is necessary.

9. 14-25816-D-11 DNL-10 — DEEPAL WANNAKUWATTE — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH IMG FUNDING, LLC 11-19-14 [280]

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

10. 14-30717-D-7 — MONICA CARTER — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-21-14 [22]

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.

11. 14-25820-D-11 FWP-15 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH IMG FUNDING, LLC 11-19-14 [319]

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

12. 14-28224-D-7 DPR-1 — DONALD/JAMI PEREA — MOTION TO AVOID LIEN OF CITIBANK, SOUTH DAKOTA, N.A. 11-8-14 [27]

Final ruling:

This is the debtors' motion to value collateral of Citibank (South Dakota) N.A. (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) by first-class mail at a street address with no attention line; (2) through the attorneys who obtained the Bank's abstract of judgment; and (3) by certified mail to the attention of a "Manager, Officer or Authorized Agent Designated to Accept Service for Corporation." The first method was insufficient because the rule requires service on an FDIC-insured institution such as the Bank by certified mail to the attention of an officer. The second method was insufficient because there is no evidence the attorneys who obtained the Bank's abstract of judgment are authorized to accept service of process on the Bank's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir.

BAP 2004). The third method was insufficient because the rule requires service on an FDIC-insured institution to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process. See Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution to the attention of a "Manager, Officer or Authorized Agent Designated to Accept Service for Corporation" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

13. 14-28224-D-7 DONALD/JAMI PEREA — MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
DPR-2 — 11-8-14 [32]

Final ruling:

This is the debtors' motion to value collateral of Portfolio Recovery Associates, LLC ("Portfolio"). The motion will be denied because the moving parties failed to serve Portfolio in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Portfolio (1) at a street address with no attention line; (2) through the attorneys who obtained Portfolio's abstract of judgment; and (3) to the attention of a "Manager, Officer or Authorized Agent Designated to Accept Service for LLC," but at an address that is not Portfolio's address and not the address of Portfolio's registered agent for service of process. The first method was insufficient because the rule requires service on a corporation, partnership or other unincorporated association 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 there is no evidence the attorneys who obtained Portfolio's abstract of judgment are authorized to accept service of process on Portfolio's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The third method was insufficient because if service is to be made to the attention of an agent for service of process, it must be an agent authorized by appointment or by law to receive service (Rule 7004(b)(3)), whereas here, the moving parties utilized the address of The Prentice-Hall Corporation System, Inc., which is the agent for service of process of Corporation Service Company, which in turn, is the agent for service of process of Portfolio. In other words, the moving parties did not serve Portfolio's agent for service of process; they served the agent for service of process of Portfolio's agent for service of process. In addition, addressing service to a manager or officer at an address that not an address of Portfolio was insufficient because it is unlikely a manager or officer of Portfolio is to be found at the address of a corporate agent for service of process.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

14. 14-28224-D-7 DONALD/JAMI PEREA — MOTION TO AVOID LIEN OF UNIFUND CCR, LLC
DPR-3 — 11-8-14 [38]

Final ruling:

This is the debtors' motion to value collateral of Unifund CCR, LLC ("Unifund"). The motion will be denied because the moving parties failed to serve Unifund in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Unifund (1) at a street address with no attention line; (2) through the attorneys who obtained Unifund's abstract of judgment; and (3) to the attention of a "Manager, Officer or Authorized Agent Designated to Accept Service for LLC," but at an address that is not Unifund's address and not the address of Unifund's registered agent for service of process. The first method was insufficient because the rule requires service on a corporation, partnership or other unincorporated association 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 there is no evidence the attorneys who obtained Unifund's abstract of judgment are authorized to accept service of process on Unifund's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The third method was insufficient because if service is to be made to the attention of an agent for service of process, it must be an agent authorized by appointment or by law to receive service (Rule 7004(b)(3)), whereas here, the moving parties utilized the address of The Prentice-Hall Corporation System, Inc., which is the agent for service of process of Corporation Service Company, which in turn, is the agent for service of process of Unifund. In other words, the moving parties did not serve Unifund's agent for service of process; they served the agent for service of process of Unifund's agent for service of process. In addition, addressing service to a manager or officer at an address that not an address of Unifund was insufficient because it is unlikely a manager or officer of Unifund is to be found at the address of a corporate agent for service of process.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

15. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO DISQUALIFY JUDGE BARDWIL
11-10-14 [700]

Final ruling:

This motion has been resolved by order entered December 5, 2014. Matter removed from calendar. No appearance is necessary.

16. 13-29030-D-7 WILLIAM/JANET CHENG

MOTION TO VACATE AND SET ASIDE THE 10/22/12 TENATIVE RULINGS AND PROPOSED ORDER AND ORDERS THAT WERE ENTERED THAT THE COURT AND TRUSTEE VIOLATED, ETC.
10-24-14 [683]

Final ruling:

This motion has been resolved by order entered December 5, 2014. Matter removed from calendar. No appearance is necessary.

17. 13-29030-D-7 WILLIAM/JANET CHENG

MOTION FOR TRUSTEE RICHARDS FINAL REPORT AND FINAL APPLICATION FOR FINAL COMPENSATION
10-15-14 [651]

Final ruling:

This motion has been resolved by order entered December 5, 2014. Matter removed from calendar. No appearance is necessary.

18. 06-22532-D-7 RIO MORALES
SHS-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN H. SCHULTZ FOR STEVEN H. SCHULTZ, SPECIAL COUNSEL
11-10-14 [533]

Tentative ruling:

This is the application of Steven H. Schultz ("Applicant") for an award of fees and costs incurred as special counsel for the debtors while this case was a chapter 11 case and the debtors were debtors-in-possession. The Applicant seeks $20,515 in fees and $2,907.96 in costs, for a total of $23,422.96. Creditor Lichen, Inc. ("Lichen") has filed opposition, and the Applicant has filed a reply. For the following reasons, the motion will be granted.

This is the Applicant's second application for compensation; the first was denied, in part with prejudice and in part without prejudice. In particular, the application was denied with prejudice with respect to the sums paid by the Applicant to Speyer & Perlberg and James Farinaro. By this second application, the Applicant has reduced the total amount requested by $26,718.58, representing the amounts paid to those other law firms. Thus, the Applicant has addressed one of the concerns the court had regarding his first application. The court's other two concerns were that the Applicant had failed to demonstrate that his services were not duplicative of the services of those other law firms, and failed to demonstrate that his services were performed solely for the debtors and not for entities related to them, as expressly required by the order approving the Applicant's employment.

The court is satisfied with the Applicant's explanation in this new application. He states that the related business entities were wholly owned by the

debtors; the contracts and security agreements with the lender "crossed back and forth" between the debtors and their related entities; at the time of the representation, there was no effective difference between the debtors and the related entities, and the representation of the related entities "benefitted the debtors regardless." Further App., filed Nov. 10, 2014, at 3:3. The Applicant states he "spent no extra time representing one over the other" (id. at 7:3-4), adding that "[t]he interests of the Debtor and the [related] entities was hopelessly intermingled" (id. at 8:17), such that "[i]t would have been impossible to represent the debtors without at least some ancillary level of representation of the [related] entities." Id. at 8:18-21. The Applicant states in his supporting declaration that "there was/is no actual difference between" the debtors and their related entities" (Schultz Dec., filed Nov. 10, 2014, at 3:20-21), that "[w]ork [he] performed for the debtors automatically benefit[ted] their entities and vice versa" (id. at 3:21-22), and that "[t]he work for each was the same as were the issues." Id. at 3:23-24.

The court is satisfied that the debtors received the benefit of the Applicant's services, and any benefit to the debtors' related entities was incidental and unavoidable. Lichen contends in its opposition that allowing compensation to the Applicant from this estate would result in the related entities receiving the Applicant's services free of charge, to the detriment of creditors of the debtors. The Applicant states he has received no payment for his services, and as several years have passed since his services were completed, it is safe to assume the related entities have been unable to pay. The court is persuaded that all of the Applicant's services benefitted the debtors, and to some extent, their related entities as well, but that is not a basis to deny compensation to the Applicant from the source that is able to pay. The court notes that, whereas the chapter 7 trustee opposed the Applicant's first application, she has not opposed this one. Thus, she appears satisfied the Applicant's services benefitted the estate, and no longer questions the extent to which the Applicant was pursuing claims on behalf of the debtors' related entities.

Lichen also claims for other reasons that the Applicant's services did not benefit the estate, and were not reasonably intended to do so. It appears accurate that the action the Applicant assisted in prosecuting, in New York state court, resulted in no monetary benefit to the estate. However, compensation to counsel in a bankruptcy case is not dependent on his or her having achieved an actual benefit to the estate; the question is whether the services were reasonably likely to benefit the estate at the time they were performed. Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet), 251 B.R. 103, 108 (9th Cir. BAP 2000). It is also clear the Applicant's employment was on a hourly, not a contingency, basis. Further, the court has no reason to second-guess, with the benefit of hindsight, the conclusion that the Applicant's services were intended to and were reasonably likely to benefit the estate at the time they were rendered.

In this regard, Lichen relies heavily on its claim that the purpose of the Applicant's employment was to invalidate Lichen's claim to the settlement proceeds, and therefore, that the scope of the services authorized by the employment orders was so limited, whereas the state court litigation sought an award of damages instead. Lichen correctly points out that Lichen and the debtors were granted relief from stay to proceed in state court to determine their rights to the proceeds. However, the debtors did not need relief from stay to pursue affirmative actions against Lichen (or anyone else), and it was clear from the Applicant's further declaration supporting the employment applications that, while he would focus on freeing the El Dorado Hills property of Lichen's lien, he would also be seeking an award of damages. Thus, the court does not agree with Lichen that the

services performed in the New York action were beyond the scope of the employment orders.

The court also disagrees with Lichen's contentions that the Applicant's delay in filing the action in New York and his failure to take any action after August of 2010 should affect the outcome of this application. A court evaluating a fee application must often consider the services performed from the outside; that is especially so here, where the action was litigated in a New York court. The court will not take the word of the Applicant's opponent in the litigation regarding when the Applicant should have commenced the action or how long he should have pursued it.

Finally, Lichen refers to a comment this court made in its recent ruling on the application of the trustee's counsel for compensation. The majority of that counsel's services were incurred in connection with an adversary proceeding that resulted in a ruling that Lichen did not have a security interest in the disputed funds. Addressing Lichen's claim that counsel's fees were excessive, the court observed that "the litigation was essentially the whole ballgame: if the trustee had lost or had failed to prosecute [the adversary proceeding], all the disputed funds would have gone to Lichen as a secured creditor and nothing would have remained for unsecured creditors." From that remark, Lichen concludes that "it was the Trustee's actions, not [the Applicant's] actions, which conferred a benefit to the estate." Lichen's Opp. at 9:10-12.

This argument carries no weight. First, it conflicts with Lichen's earlier argument that the New York action the Applicant prosecuted was an action for damages rather than to invalidate Lichen's lien. Second, the Applicant's services were performed well in advance of the trustee's counsel's services. By the time the trustee's counsel got involved, the issue of Lichen's lien had not been resolved, either in New York or in this court. That the trustee's counsel was successful does not mean the Applicant's services were of no benefit. The court concludes that Lichen has failed to demonstrate there was a duplication of services or that the Applicant's services were of no benefit to the estate.

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

19.	14-27534-D-7 ICE-1	JENNY CASTILLO	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 11-14-14 [37]

Final ruling:

This is the trustee's objection to the debtor's claim of exemption of $5,800 in value in a whole-life policy insuring the life of the debtor. The exemption is claimed under Cal. Code Civ. Proc. § 703.140(b)(5) - the so-called "wild-card" exemption. The objection was noticed pursuant to LBR 9014-1(f)(1), and no opposition has been filed. However, that does not by itself entitle the trustee to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in

which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the objection, and for the following reasons, the objection will be sustained.

The trustee objects to the claim of exemption on the ground that the policy is not owned by the debtor, and therefore, she cannot claim it as exempt. The trustee has submitted as exhibits copies of the Single Pay Group Whole Life Certificate (the "policy certificate") and Certificate of Policy Endorsement for a policy issued by National Guardian Life Insurance Company. Both identify the debtor as the insured and her son, Frank A. Castillo, as the owner of the policy. According to amended Schedules B and C filed October 28, 2014, the policy was intended for the prepayment of the debtor's funeral expenses, and the policy has been irrevocably assigned to a particular named funeral home.[1] According to the trustee, the debtor's other son, Vincent Castillo, testified at the meeting of creditors that he and his siblings had prepaid the debtor's funeral expenses from cash belonging to the debtor.[2] The policy was issued April 9, 2014; the petition commencing this case was filed July 24, 2014. Thus, the policy was purchased and in existence pre-petition. The trustee intends to pursue turnover of what she refers to as the "insurance monies" by way of a preference or fraudulent transfer action.

As the objecting party, the trustee bears the burden of proving that the claim of exemption is not proper. Rule 4003(c); Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999). The validity of a claimed exemption is determined as of the date of the filing of the bankruptcy petition. § 522(b)(3)(A); Culver, L.L.C. v. Chiu (In re Chiu), 226 B.R. 743, 751 (9th Cir. B.A.P. 2001). Exemptions are to be liberally construed in favor of debtors. In re Lucas, 77 B.R. 242, 245 (9th Cir. BAP 1987).

Notwithstanding these basic principles, federal bankruptcy law is clear that a debtor may exempt from a bankruptcy estate only property that is property of the estate to begin with, which in turn includes, as a general rule, only the debtor's interests in property. When a debtor files for bankruptcy, a bankruptcy estate is created, which includes all of the debtor's legal or equitable interests in property at the commencement of the case. § 541(a). A debtor may exempt certain kinds of property from property of the estate. § 522(b)(1) ("Notwithstanding section 541 of [title 11], an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection.") (emphasis added).[3] A state may "opt out" of the so-called "federal" exemptions provided by the Bankruptcy Code. § 522(b)(2). California is such an "opt out" state. Cal. Code Civ. Proc. § 703.130. And where a bankruptcy debtor claims property as exempt under California law, and in particular, under the wild-card exemption, as the debtor has done here, that property includes only property in which the debtor has an interest. Cal. Code Civ. Proc. § 703.140(b)(5) ("The following exemptions may be elected as provided in subdivision (a): (5) The debtor's aggregate interest, not to exceed in value [$1,280] plus any unused amount of the exemption provided under paragraph (1), in any property.") (emphasis added).

In this case, the trustee has submitted evidence demonstrating that the insurance policy was not owned by the debtor as of the commencement of the case; thus, it did not become property of the estate, and was not property the debtor could exempt from the estate.[4] For this reason, the objection will be sustained by minute order. No appearance is necessary.

1 There is no indication of such an assignment in the certificates submitted by the trustee. However, in any event, the court has not been asked to rule on any issues concerning the assignment, and the assignment does not appear to be relevant to this objection.

2 The debtor suffers from dementia; thus, by order entered October 10, 2014, the court appointed Vincent Castillo as her personal representative for purposes of this case.

3 It is a "well settled rule that property cannot be exempted unless it is first property of the estate." Heintz v. Carey (In re Heintz), 198 B.R. 581, 586 (9th Cir. BAP 1996).

4 The Certificate of Policy Endorsement states that the beneficiary of the policy is the "estate of insured." In the interest of completeness, the court has considered whether the interest of the beneficiary is the property interest the debtor is seeking to exempt. The policy certificate indicates that the only right the beneficiary has under the policy is the right to receive the death benefit upon the death of the insured. There is no indication in the claim of exemption that the right of the beneficiary is the property interest the debtor is seeking to exempt. Instead, it appears the policy itself or its cash value is the property the debtor is seeking to exempt. The asset is described in the claim of exemption as follows:

> Because debtor does not have much time left, debtor prepaid $7,212.08 for her funeral services on 4/1/2014. With instructions from P.L. Fry & Son Funeral Home, the payment has been structured as a whole life insurance company with P.L. Fry & Son as an irrevocable assignee of the policy. The surrender value of the policy is $5,800.

Amended Schedule C, filed Oct. 28, 2014. This language is ambiguous at best, and the court finds that the debtor has not attempted to exempt the interest of the beneficiary under the policy. The court does not mean to suggest that the debtor could claim that interest as exempt; that is a question the court simply is not called upon to answer at this time.

20. 14-30335-D-7 CJO-1 NAVY FEDERAL CREDIT UNION VS.	TINA BURKHART	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-20-14 [10]

21. 13-21443-D-7 UST-1 — WINNIEFREDO/LORAINE MACANDOG — MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A) 11-3-14 [65]

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 for denial of discharge of both debtors under 11 U.S.C. Section 727(a) is supported by the record. As such the court will grant the motion for denial of discharge of both debtors under 11 U.S.C. Section 727(a). Moving party is to submit an appropriate order. No appearance is necessary.

22. 14-27645-D-7 DNL-3 — BETSY WANNAKUWATTE — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH IMG FUNDING, LLC 11-19-14 [86]

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

23. 14-27645-D-7 DNL-4 — BETSY WANNAKUWATTE — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 11-19-14 [92]

Final ruling:

The hearing on this motion was continued to January 21, 2015 at 10:00 a.m. by a stipulated order. No appearance is necessary.

24. 14-29547-D-7 FF-1 — FRANCIS/ISABEL FAHRNER — CONTINUED MOTION TO COMPEL ABANDONMENT 9-30-14 [9]

This matter will not be called before 10:45 a.m.

25. 12-29949-D-7 RICHARD/JEANNE LOTT
KAZ-1
CITIMORTGAGE, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-4-14 [80]

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 21, 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.

26. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2394 HL-3
BURKART V. PRAKASH ET AL

MOTION BY QUINN J. CHEVALIER, MICHAEL A. HACKARD, MERIAM E. HANSEN, NOU LEE, JEREMY P. RUTLEDGE TO WITHDRAW AS ATTORNEY
11-19-14 [107]

27. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2437 HL-3
BURKART V. SINGH

MOTION BY QUINN J. CHEVALIER, MICHAEL A. HACKARD, MERIAM E. HANSEN, NOU LEE, JEREMY P. RUTLEDGE TO WITHDRAW AS ATTORNEY
11-19-14 [104]

28. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2501 HL-3
BURKART V. SINGH

MOTION BY QUINN J. CHEVALIER, MICHAEL A. HACKARD, MERIAM E. HANSEN, NOU LEE, JEREMY P. RUTLEDGE TO WITHDRAW AS ATTORNEY
11-19-14 [100]

29. 14-29951-D-7 JAYNIE/WESLEY WISDOM
VVF-1
AMERICAN HONDA FINANCE CORPORATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-14-14 [13]

Final ruling:

This matter is resolved without oral argument. This is American Honda Finance Corporation's motion for relief from automatic stay. The court's 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 debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

30. 14-30161-D-7 MARY OLIVAREZ

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
10-10-14 [5]

31. 09-29162-D-11 SK FOODS, L.P.
SH-284

CONTINUED OBJECTION TO CLAIM OF STOUGHTON DAVIDSON ACCOUNTANCY CORPORATION, CLAIM NUMBER 123
7-22-14 [5021]

Final ruling:

Objection withdrawn by the trustee as the moving party. Matter removed from calendar. No appearance is necessary.

32. 09-29162-D-11 SK FOODS, L.P.
SH-286

CONTINUED OBJECTION TO CLAIM OF FARELLA BRAUN + MARTEL, CLAIM NUMBER 380
7-22-14 [5025]

Tentative ruling:

The court intends to continue the hearing on this objection to February 4, 2015, at 10:00 a.m. to be heard with the creditors' committee's motion to disgorge fees. The court intends to use this hearing only as a status conference.

33. 09-29162-D-11 SK FOODS, L.P.
SH-293

OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPARTMENT, CLAIM NUMBER 300
10-16-14 [5267]

Final ruling:

Objection withdrawn by the trustee as the moving party. Matter removed from calendar. No appearance is necessary.

34. 09-29162-D-11 SK FOODS, L.P.
SH-294

OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 354
10-16-14 [5271]

Tentative ruling:

This is the trustee's objection to the claim of the California State Board of Equalization ("SBE"), Claim No. 354. The SBE filed opposition on November 25, 2014, and on December 1, 2014, the trustee purported to withdraw the objection. However, at that point, the trustee no longer had the ability to withdraw the objection unilaterally. See Fed. R. Bankr. P. 9014(c) and 7041, incorporating Fed. R. Civ. P. 41(a)(1) and (2). The court interprets the purported withdrawal of the objection as an indication that the trustee does not wish to contest the issues raised by the SBE, and thus, the court intends to overrule the objection.

The court will hear the matter.

35. 09-29162-D-11 SK FOODS, L.P.
SH-296

MOTION FOR COMPENSATION FOR BRADLEY D. SHARP, CHAPTER 11 TRUSTEE
11-18-14 [5384]

36. 13-35762-D-12 JOSE DASILVA
DAM-1

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DAMRELL, NELSON, SCHRIMP, PALLIOS, PACHER & SILVA FOR FRED A. SILVA, SPECIAL COUNSEL
11-19-14 [181]

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.

37. 14-23368-D-7 BLL-7 — JESSE M. LANGE DISTRIBUTOR, INC. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RABOBANK, N.A. 11-19-14 [63]

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.

38. 14-23368-D-7 BLL-8 — JESSE M. LANGE DISTRIBUTOR, INC. — MOTION FOR ADMINISTRATIVE EXPENSES 11-12-14 [58]

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 for administrative expenses is supported by the record. As such the court will grant the motion for administrative expenses. Moving party is to submit an appropriate order. No appearance is necessary.

39. 14-25678-D-7 DNL-3 — SARAH WANNAKUWATTE — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 11-19-14 [50]

Final ruling:

This matter has been continued by stipulated order to January 21, 2015, at 10:00 a.m.

40. 14-28694-D-11 — RICHARD/JENNIFER GARCIA — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-28-14 [1]

41. 14-28694-D-11 RICHARD/JENNIFER GARCIA
CAH-2

CONTINUED MOTION TO EMPLOY C. ANTHONY HUGHES AS ATTORNEY
10-16-14 [28]

42. 14-27224-D-7 KAREN CONROE
DLH-1
CONNIE OST VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-3-14 [41]

43. 14-31725-D-11 TAHOE STATION, INC.

STATUS CONFERENCE RE: VOLUNTARY PETITION
11-30-14 [1]

44. 14-27645-D-7 BETSY WANNAKUWATTE
PD-1
WELLS FARGO BANK, N.A. VS.

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

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

45. 14-31147-D-7 JAN NORMAN — MOTION TO COMPEL ABANDONMENT
HDR-1 — 11-24-14 [9]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon all of the personal property assets of the estate. (The debtor scheduled no real property; thus, as a practical matter, the motion seeks the abandonment of all of the assets of the estate.) The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. For the guidance of the parties, however, the court issues this tentative ruling.

Juan Cardenas and Stephanie Cavatoni are listed on the debtor's Schedule G as parties to a 13-month lease with the debtor that expires August 31, 2015. However, Cardenas and Cavatoni were not listed on the debtor's master address list, and have not been given formal notice of the case. Nor were they served with this motion. Minimal research into the case law concerning § 101(5) and (10) of the Code discloses an extremely broad interpretation of "creditor," certainly one including parties to a lease with the debtor. Thus, the debtor was required by Fed. R. Bankr. P. 1007(a)(1) to list them on her master address list. This court also takes the view that the debtor was required to serve this motion on all creditors.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of Fed. R. Bankr. P. 6007. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)). In this case, the debtor served all creditors except Cardenas and Cavatoni.

The court intends to continue the hearing and require the debtor to file an amended master address list to include Cardenas and Cavatoni, and to file a notice of continued hearing and serve it, together with the motion and supporting documents, on those creditors. The court will hear the matter.

46. 14-25148-D-11 HENRY TOSTA — MOTION TO AMEND
MF-25 — 12-1-14 [321]

47. 12-27753-D-7 TAMARON FALLS MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) NA
12-3-14 [31]

Final ruling:

This is the debtor's motion to avoid an alleged judicial lien held by Capital One Bank (USA) NA (the "Bank"). The motion will be denied for the following reasons.

First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice of hearing does not comply with the local rules. The notice states: "if you do not want the Court to grant the Motion, or if you want the court to consider your views on the Motion, then you or your attorney must appear at the hearing . . . ." However, the notice goes on to state: "you or your attorney must take all steps referenced above and appear at the hearing . . . ," and "if you or your attorney do not take these steps, the Court may decide that you do not oppose the approval of the Motion, remove the matter from the calendar and resolve it, including granting the requested relief, without oral argument." Thus, the notice begins by suggesting that LBR 9014-1(f)(2) is applicable (although it does not cite the rule), but goes on to state that the matter may be removed from calendar and the motion granted without oral argument, which is not possible with a motion noticed under (f)(2) of the rule. Further, the notice does not state that no written opposition need be filed, as required by LBR 9014-1(d)(3).

Third, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank by first-class mail at a post office box address, with no attention line, whereas the rule requires that an FDIC-insured institution such as the Bank be served by certified mail to the attention of an officer.

Fourth, the moving party has failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by the Bank in the amount asserted by the debtor, recorded in the county in which the debtor's property is located. The debtor has filed as an exhibit a copy of an unrecorded abstract of judgment. There is no copy of the recorded abstract of judgment on file; thus, the debtor has failed to demonstrate that the Bank holds a judicial lien that impairs the debtor's exemption.

"The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy

of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

A recorded copy of the abstract of judgment is required here for the additional reason that the record suggests the debtor may have acquired her interest in the property after the abstract of judgment was recorded; thus, even if the Bank has a judicial lien against the property, the debtor may not be entitled to avoid it. Under California law, the recording of an abstract of judgment with the county recorder of a particular county creates a judicial lien on real property of the judgment debtor in that county. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). However, a debtor who acquires his or her interest in the property after the time the abstract of judgment is recorded may not avoid the lien. See Farrey v. Sanderfoot, 500 U.S. 291, 296 (1991) ["[U]nless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, he or she cannot avoid the fixing of the lien under the terms of § 522(f)(1)."]; Weeks v. Pederson (In re Pederson), 230 B.R. 158, 163, 164 (9th Cir. BAP 1999) ["A debtor must acquire an interest in property before the judicial lien attaches in order to be able to avoid the lien under § 522(f)(1)."].

Here, there is no evidence as to when the Bank recorded its abstract of judgment; thus, there is no evidence as to when it acquired its judicial lien. Further, there is no evidence as to when the debtor acquired her interest in the property, and the record suggests she may have acquired it after the Bank acquired its lien. The address the Bank listed for the debtor in its abstract of judgment, which was issued a year before the debtor filed this bankruptcy case, is different from the address of the property the debtor claimed as her exempt homestead in this case. This suggests the debtor resided in the property listed in the abstract of judgment at the time the abstract was recorded, and acquired her interest in her present residence – the property against which she seeks to avoid the lien – at a later date. There is simply insufficient evidence from which the court can make the necessary findings, and the debtor will need to address this issue by way of admissible evidence if she files a new motion to avoid the alleged lien.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

48. 13-35066-D-7 JOAN POTTERTON
JWR-1

CONTINUED MOTION FOR COMPENSATION FOR JOHN W. REGER, CHAPTER 7 TRUSTEE(S)
10-22-14 [64]

Final ruling:

This motion has been granted by minute order entered December 4, 2014. The matter is removed from calendar. No appearance is necessary.

49.	14-29170-D-7 MET-1 BANK OF THE WEST VS.	VAUNA KRACHT	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 12-1-14 [28]

50.	14-30870-D-11 ET-1	SKANDIA FAMILY CENTER, INC.	MOTION TO EMPLOY MATTHEW R. EASON AS ATTORNEY(S) 11-24-14 [22]

Tentative ruling:

This is the application of the debtor and debtor-in-possession in this case to employ counsel. The court intends to deny the application for the following reasons.

First, the notice of hearing does not comply with the local rules. The notice states: "if you do not want the court to grant the relief requested, or if you want the court to consider your views, you or your attorney must appear at the hearing . . . ." However, the notice goes on to require that written opposition be filed at least 14 days prior to the hearing date, adding that "[w]ithout good cause, no party shall be heard in opposition to [the] motion at oral argument if written opposition to the motion has not been timely filed." Thus, the notice begins by suggesting that LBR 9014-1(f)(2) is applicable (although it does not cite the rule), but goes on to state that written opposition must be filed, as required by LBR 9014-1(f)(1) (although, again, it does not cite the rule). Thus, the notice gives conflicting information about how to oppose the application. Further, the moving party gave only 23 days' notice of the hearing, rather than 28 days', as required for a notice purporting to require the filing of written opposition. See LBR 9014-1(f)(1).

Second, the proof of service states that the declarant served the application, notice of hearing, and order on the application, whereas there is no rule authorizing the service of an order before one is entered, and service of the order may have discouraged parties-in-interest from seeking to oppose the application. Third, counsel's affidavit is attached to the application as an exhibit, rather than being filed separately, as required by the court's Revised Guidelines for the Preparation of Documents, EDC 2-901 (rev. 1/17/14).

Fourth, the supporting affidavit of Matthew R. Eason does not satisfy the requirements of Fed. R. Bankr. P. 2014(a). Mr. Eason states that neither he nor the firm (Eason & Tamborini) nor any shareholder, counsel, or associate thereof, insofar as he has been able to ascertain, has any connection with the debtor, its creditors, the United States Trustee, or any other parties in interest, or its respective attorneys, except as set forth below. There are no connections set forth below. Thus, Mr. Eason states by implication that there are no such connections, whereas Mr. Eason and the firm represented the debtor as debtor-in-possession in a prior

case in this court, and received $14,243 for their services in that case. Further, Mr. Eason does not state whether he or his firm is owed any money from their prior representation of the debtor, nor does he give the particulars as to what he has been paid for said prior representation. These are connections that should have been disclosed. It is not proposed counsel's prerogative to assume the court will remember prior connections, and in any event, the disclosures are for the benefit of the United States Trustee, creditors, and other parties-in-interest, as well as the court.

Further, the affidavit does not disclose whether there are connections with the "accountants" of the relevant parties or with "any person employed in the office of the United States trustee," as required by Fed. R. Bankr. P. 2014(a). Further, the list of "interested parties" the firm has reviewed, according to the affidavit, includes a variety of types of interested parties, but only the "largest unsecured creditors," not all unsecured creditors. The list also does not include the debtor's equity security holders. Finally, the affidavit purports to disclose connections between Mr. Eason, the firm, and its shareholders, counsel, and associates; it does not purport to disclose connections, if any, between employees of the firm, on the one hand, and the parties listed in the rule, on the other hand. As a result of the above procedural and substantive defects, the court intends to deny the motion.

The court will hear the matter.

51.	14-29547-D-7 PA-3	FRANCIS/ISABEL FAHRNER	MOTION TO AUTHORIZE TRUSTEE TO OPERATE BURTON COURT APARTMENTS, APPROVING STIPULATION FOR USE OF CASH COLLATERAL AND AUTHORIZING TRUSTEE TO EMPLOY AND COMPENSATE TED KATZAKIAN PROPERTY MANAGEMENT O.S.T. 12-10-14 [42]

This matter will not be called before 10:45 a.m.