UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 23, 2019 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.	18-22303-D-7 ICE-1	EDWIN/MAUREENA WILLIAMS	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WILFRED WILLIAMS 12-12-18 [17]

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.

2. 18-23708-D-7 DWE-1 — STANLEY ASBURY AND KATHRINE STEWART ASBURY — MOTION FOR RELIEF FROM AUTOMATIC STAY
U.S. BANK NATIONAL ASSOCIATION VS.
12-14-18 [77]

Final ruling:

This matter is resolved without oral argument. This is U.S. Bank National Association'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.

3. 18-25811-D-11 — JLM ENERGY, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-13-18 [1]

4. 18-25811-D-11 UST-1 — JLM ENERGY, INC. — MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION TO DISMISS CASE
12-19-18 [34]

Final ruling:

The motion has been stayed on the application of the moving party. The matter is removed from calendar.

5. 17-24617-D-7 DNL-3 — PATRICIA PAYTON — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALLEN E. SEIVERTSON
12-24-18 [44]

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.

6. 18-23919-D-7 TIFFIANY MCINTYRE — MOTION FOR ENTRY OF DEFAULT JUDGMENT
18-2152 UST-1 — 12-18-18 [11]
U.S. TRUSTEE V. MCINTYRE

Final ruling:

The hearing on this motion is continued to February 27, 2019 at 10:00 a.m. No appearance is necessary on January 23, 2019.

7. 18-23919-D-7 TIFFIANY MCINTYRE — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-26-18 [65]

8. 18-24030-D-7 THOMAS/JANICE JOHNSON — MOTION TO AVOID LIEN OF ALTAONE FEDERAL CREDIT UNION
BSH-3 — 12-10-18 [29]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by AltaOne Federal Credit Union ("AltaOne"). The motion will be denied because the moving parties failed to serve AltaOne in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served AltaOne by certified mail to the attention of an officer, whereas service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as AltaOne, must be by first-class mail, not certified mail. Compare Rule 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h).

As a result of this service defect, the motion will be denied by minute order. Alternatively, the court will continue the hearing to permit the moving parties to correct this service defect. The court will hear the matter.

9. 18-24030-D-7 THOMAS/JANICE JOHNSON — MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
BSH-4 — 12-10-18 [34]

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.

10. 17-20731-D-11 DB-32 — CS360 TOWERS, LLC — CONTINUED APPROVAL OF CHAPTER 11 SMALL BUSINESS DISCLOSURE STATEMENT FILED BY TRUSTEE BRADLEY D. SHARP 11-14-18 [507]

11. 17-20731-D-11 DB-36 — CS360 TOWERS, LLC — OBJECTION TO CLAIM OF NORMAN COONTZ, CLAIM NUMBER 6-1 12-7-18 [543]

Tentative ruling:

This is the trustee's objection to the claim of Norman Coontz (the "claimant"), Claim No. 6 on the court's claims register. The claimant has filed a response (essentially, an opposition) and the trustee has filed a reply. The court will use this hearing as a status conference.

The claim centers on the claimant's pre-petition purchase from the debtor of a unit in the condominium complex that is the primary subject of this chapter 11 case. The claimant contends the debtor's agents misrepresented to him the size and suitability of the parking space assigned to his unit and that his tenants moved out, at least in part, because the parking space was too small for their SUV. The claimant claims to have incurred $41,285 in attorney's fees in an arbitration proceeding and/or a state court action concerning the dispute and he claims the misrepresentations resulted in a $40,000 loss in value of his unit, in light of the size and location of the parking space. The claimant asserts additional amounts are due for arbitration costs, appraisal fees, lost and reduced rents, and property management fees, and he seeks an additional $7,000 as his estimated attorney's fees for filing the proof of claim and litigating any objection.

The trustee asserts in reply that the claimant is not a prevailing party, and therefore, cannot assert a claim for attorney's fees or other costs under the attorney's fee clause in the purchase and sale agreement. He also points to the "as is" clause in the agreement as precluding the claim. The court is not prepared to rule on the objection at this time based solely on the agreement itself and the trustee's legal interpretation of it. The agreement came to light only with the claimant's response to the objection and the claimant has not had an opportunity to address the argument.

In his response to the objection, the claimant refers to "an arbitration which was about to become a final judgment but for the happenstance of bankruptcy." Claimant's Response, DN 569, at 1:23-24. The court has no idea what this means because the only arbitration and state court documents submitted by the claimant are (1) an arbitration award in his favor for $2,380 as a monetary sanction for the debtor's failure to produce for deposition its person most qualified to testify; (2) the minutes of the hearing on the claimant's petition to confirm that award; (3) the order confirming the award; and (4) the judgment awarding him $2,380. The trustee does not dispute this portion of the claim and does not dispute a $903.76 portion

representing the claimant's share of the arbitrator's retainer. There is no clear indication as to what stage the arbitration was at when the petition was filed.

The parties will need to apprise the court of the status of the arbitration as of the date of the debtor's petition before the court will rule on this objection to claim. Accordingly, the court intends to use this hearing as a status conference.

The court will hear the matter.

12. 17-20731-D-11 CS360 TOWERS, LLC — OBJECTION TO CLAIM OF GEMACK ASSOCIATES, LLP, CLAIM NUMBER 16-1
DB-37 — 12-7-18 [548]

Final ruling:

Pursuant to a stipulated order entered on January 9, 2019, the hearing on this objection is continued to February 27, 2019 at 10:00 a.m. No appearance is necessary on January 23, 2019.

13. 18-26431-D-7 GEORGE/MONICA WOODWARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 12-21-18 [20]
NAVY FEDERAL CREDIT UNION
VS.

Final ruling:

This matter is resolved without oral argument. This is Navy Federal Credit Union'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 debtor is 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. 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). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

14. 18-25346-D-7 SHIV SINGH — MOTION TO AVOID LIEN OF AXIS CAPITAL, INC.
GMW-2 — 12-19-18 [29]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Axis Capital, Inc. ("Axis"). The motion will be denied because the moving party failed to serve Axis in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Axis only through the attorneys who obtained its abstract of judgment, whereas there is no evidence the attorneys are authorized to receive service of process on behalf of Axis in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

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

15. 18-27552-D-7 JEREMY/LISA DENU — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 12-21-18 [17]
FIRST INVESTORS FINANCIAL SERVICES VS.

Final ruling:

This matter is resolved without oral argument. This is First Investors Financial Services' 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 debtor is 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. 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). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

16. 18-20568-D-7 PAUL AMADOR — MOTION TO SELL
ADJ-2 — 12-12-18 [23]

Tentative ruling:

This is the trustee's motion to sell the estate's undivided one-third interest in certain real property. No opposition has been filed and the court intends to entertain overbidding, if any, at the hearing, subject to the trustee providing satisfactory answers to two questions. First, the motion and supporting declaration state the buyer is a "completely unrelated third party," whereas (1) the buyer and the debtor have the same last name; and (2) the purchase and sale agreement lists the buyer's address as the same property in which the trustee seeks to sell a one-third interest. These facts suggest the buyer is a relative of the debtor and, possibly, already the owner of some or all of the other two-thirds interest.

Second, the address of the property, according to the motion, declaration, purchase and sale agreement, and appraisal, is 1309 S. Golden Gate Ave., Stockton, whereas the notice of hearing, which is the only document served on creditors, gives the address as 3109 S. Golden Gate Ave., Stockton. The court recognizes that the sale of an undivided one-third interest in real property is unlikely to generate overbidding, but the court is nevertheless concerned with the possible insufficiency of the notice.

The court will hear the matter.

17. 16-27672-D-7 DAVID LIND — MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S)
DNL-27 — 12-26-18 [719]

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.

18. 18-20774-D-11 S360 RENTALS, LLC
PP-1
TRI-POINT CAPITAL, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-18 [224]

19. 11-37779-D-7 R.C./SUSAN OWENS
DNL-5

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ATLAS LEGAL FUNDING I, L.P. AND KRUNCHCASH, LLC
12-18-18 [83]

20. 11-37779-D-7 R.C./SUSAN OWENS
18-2172 FXA-1
NIMS V. ATLAS LEGAL FUNDING I, L.P. ET AL

MOTION TO DISMISS THRIVEST SPECIALTY FUNDING, LLC
11-19-18 [10]

Tentative ruling:

This is the motion of defendant Thrivest Specialty Funding, LLC ("Thrivest") to dismiss the plaintiff's claims against it in this adversary proceeding. The plaintiff, who is also the trustee in the underlying reopened chapter 7 case (the "trustee"), has filed opposition and Thrivest has filed a reply. For the following reasons, the motion will be denied.[1]

Thrivest seeks to dismiss the trustee's claims pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Thrivest's first argument is that the trustee's claims are barred by the applicable statute of limitations, in Bankruptcy Code § 549(d). The trustee alleges in his complaint he first discovered the facts giving rise to his claims on or after

July 13, 2018, and he contends the doctrine of equitable tolling applies to that belated discovery. Thrivest contends, however, the trustee "knew or should have known" the debtor had a career in the NFL, "knew or should have known" about the debtor's cognitive symptoms, and "knew or should have known about the NFL concussion litigation and ultimate settlement." Thrivest's Memo., filed Nov. 19, 2018 ("Memo."), at 2:21-24. This "knew or should have known" language in itself indicates there are triable issues of fact material to the equitable tolling issue that are not appropriately decided on a motion to dismiss, where the court is to consider only matters in the pleadings and matters of which it may take judicial notice.

In its reply, Thrivest cites a chapter 7 trustee's "statutory obligation to investigate the debtor's financial affairs . . ." (Thrivest's Reply, filed Jan. 16, 2019 ("Reply"), at 2:12-13), adding that "[f]ormer NFL players and their counsel were sufficiently informed regarding potential claims against the NFL to file the Easterling lawsuit [apparently, the first of the NFL concussion cases] on August 17, 2011 (three months before the Trustee filed his Report of No Distribution)" (id. at 2:21-23), and "the trustee should be charged with this same knowledge . . . ." Id. at 2:23-24. The facts suggest otherwise. It is apparently undisputed that the debtor played in the NFL from 1957 through 1964. The court takes judicial notice that there is nothing in the debtors' schedules or statements in the parent case that might have put the trustee on notice the debtor had a claim against the NFL, and the case was otherwise completely unremarkable. It was determined to be a no-asset case immediately after the meeting of creditors and was closed immediately after entry of the debtors' discharge. The Thrivest loan (or purchase/assignment) was not made until four and a half years later.

The notion that a chapter 7 trustee administering hundreds of cases should at the time have delved into the debtor's background some 50 years earlier and then kept track of him and his financial affairs for five years after the case was closed is simply untenable at best. In any event, the court is not called on to decide the equitable tolling issue on this motion. It is sufficient that, accepting as true all facts alleged in the complaint and drawing all reasonable inferences in favor of the trustee, the complaint states a plausible claim to relief despite the statute of limitations defense.[2]

Next, Thrivest contends the trustee already has funds from the NFL settlement sufficient to pay all claims in full, including administrative claims, and therefore, that prosecution of the claims against Thrivest would not benefit the estate. Both parties cite Acequia, Inc. v. Clinton (In re Acequia, Inc.), 34 F.3d 800 (9th Cir. 1994), Thrivest for the proposition that a trustee may not recover property transferred or its value "when the result is to benefit only the debtor rather than the estate" (Acequia, 34 F.3d at 811), and the trustee for the proposition that a recovery "for the benefit of the estate," for purposes of Bankruptcy Code § 550(a), is broadly construed. Id. The court finds that the trustee's proposition is far more in line with the Acequia decision.

Thrivest chose language the Acequia court was quoting from Collier for a general proposition (as stated in Collier), that was obviously dicta. Thrivest overlooked (1) the holding of Acequia, which was that the debtor could pursue avoidance claims post-confirmation despite the fact that it had already paid unsecured creditors in full (34 F.3d at 808); (2) the court's rejection of the magistrate judge's holding that the debtor's recovery in the avoidance action must be limited to the amount of the unsecured claims paid (id. at 809); (3) the court's analysis of the separation of the trustee's right to avoid a transfer, under §

544(b), from his right to recover a particular amount, under § 550(a) (id. at 809-11); and (4) the wide variety of cases discussed by the court for its "broad" interpretation of "benefit to the estate." Id. at 811-12.

Further, so far as the court is aware, although it may be that the trustee has on hand funds sufficient to pay claims in full, it is not certain. At the most recent hearing in the parent case, there was an extended discussion as to whether Kaiser would assert a lien in the funds. Since then, the docket reveals only an email from the trustee's attorney to Thrivest's and the debtor's attorneys forwarding a voicemail message purporting to "confirm[] that [Kaiser] is not asserting any lien against the settlement proceeds." Thrivest's Ex. 2, filed Nov. 19, 2018. The amount due Kaiser is such that the trustee's attorney observed, on a motion to pay $25,000 of the settlement proceeds to the debtor as an advance on her exemption claim, that with the Kaiser claim, the $25,000 would leave the calculation "razor-thin."

Thrivest contends "[t]he amount of any exemption that the Debtor may assert in the Settlement Proceeds . . . would not change [Thrivest's] analysis." Memo. at 3:20-21. Thrivest posits as examples that the debtor might assert an exemption claim of $100,000 or $300,000, and contends that in either event, the trustee could pay all claims in full with funds presently on hand. However, in response to the trustee's motion to approve a compromise with the other two defendants in this adversary proceeding, also on this calendar, the debtor filed a notice stating she "is entitled to full exemption of the settlement payment . . . ." Debtor's Notice of Applicability of Exemption, filed Dec. 18, 2018, at 1:22-24. Thrivest's hypotheticals ignore the possibility the debtor may claim and be allowed such an exemption.

Finally, Thrivest cites the "single satisfaction" rule of § 550(d) and claims the trustee is seeking a double (actually, a triple) recovery because he is seeking to avoid transfers to Thrivest as well as the two litigation funding companies Thrivest paid off. However, until the trustee actually recovers the full amount requested in the adversary proceeding from one or another of the three defendants, which has not occurred, the single satisfaction rule is not in play.

Thrivest also contends, as part of its single satisfaction argument, that because the trustee has already recovered from the NFL the full amount of the debtor's concussion case settlement,
"section 550(d) bars the Trustee from recovering any additional 'value' from Thrivest." Memo. at 4:18-19. This brings to mind the Acequia court's separation of a trustee's right to "avoid" a transfer, which comes first, from his right to "recover" an avoided transfer or its value, referred to above. "[A]fter demonstrating the right to recover conveyances under section 544(b), a trustee must then establish the amount of recovery under section 550(a) of the Bankruptcy Code . . . ." Acequia, 34 F.3d at 809 (emphasis added; emphasis omitted).

Thrivest confuses the matter considerably and unnecessarily in its reply:

> The Trustee has pled a request for recovery under both alternatives provided by section 550(a): (i) recovery of the Thrivest Assignment, or (ii) recovery of its value. . . . If the Trustee avoids the Thrivest Assignment, then the estate will hold an interest superior to Thrivest in the full amount of the Settlement Proceeds. Therefore, section 550(d) precludes the Trustee from alternatively recovering the "value" of the Thrivest Assignment from Thrivest. At most, the Trustee may seek to

recover the Thrivest Assignment via the first alternative under section 550(a). Any claim to recover the value of the Thrivest Assignment under the second alternative must be dismissed as a matter of law.

Reply, at 5:4-14. Thrivest is wrong. The trustee has not pled for a recovery under both alternatives. Rather, he seeks a judgment "[a]voiding the Thrivest assignment or awarding its value" (Trustee's Amended Complaint, filed Oct. 17, 2018, at 5:27), which is a perfectly allowable request for relief in the alternative.

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

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1 The court notes that the proof of service is not signed, and the court questions whether service on co-defendant Atlas Funding I, L.P. ("Atlas") was proper. Thrivest purported to serve Atlas to the attention of "Agent for Service for Process Raul L. Sloezen" at an address in Emerson, New Jersey. However, according to the New Jersey Secretary of State, there is no entity registered in New Jersey under the name of Atlas Funding I, L.P. There is an entity registered under the name Atlas Funding, L.L.C., located in Flemington, New Jersey. Thus, there is no evidence the proper entity was served in compliance with Fed. R. Bankr. P. 7004(b)(3). As the court intends to deny the motion in any event, correction of these service defects appears unnecessary.

2 The court would add that remarks such as the following about allegations the opposing party has not specifically addressed are unhelpful and inaccurate: "The Trustee does not dispute that he knew (or should have known) Mr. Owens had a career in the NFL. The Trustee does not dispute that he knew (or should have known) about Mr. Owens' cognitive symptoms. And the Trustee admits that he relied entirely on the Debtors' disclosures and representations without conducting any affirmative diligence regarding potential claims against the NFL." Reply at 2:14-18.

21. 17-20689-D-7 MONUMENT SECURITY, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
LEVON PETROSIAN VS. — 12-26-18 [459]

Final ruling:

The motion is denied for the following reasons. Although the motion for relief from stay and supporting documents were filed on December 26, 2018, the proof of service indicates service on December 27, 2018. This evidences moving party gave only 27 days' notice. As such the notice of hearing does not provide the appropriate opportunity for opposition when giving less than 28 days' notice as required by LBR 9014-1(f)(2)(c). Also, moving party has failed to include an appropriate docket control number as required by LBR 9014-1(c). As a result of these procedural/service defects, the court will deny the motion by minute order. No appearance is necessary.

22. 17-20689-D-7 ET-23 — MONUMENT SECURITY, INC. — CONTINUED OBJECTION TO CLAIM OF EVETTE BARRETT, CLAIM NUMBER 39 9-7-18 [320]

Final ruling:

This is the objection of the former debtor-in-possession to the claim of Evette Barrett, Claim No. 39 on the court's claims register. The objection was originally heard on October 31, 2018 and the hearing was continued to this date. On December 4, 2018, on the motion of the then debtor-in-possession, this case was converted from chapter 11 to chapter 7. As a result of the conversion, the former debtor-in-possession no longer has standing to prosecute this objection. Accordingly, the objection will be overruled by minute order for lack of standing. No appearance is necessary.

23. 17-20689-D-7 ET-24 — MONUMENT SECURITY, INC. — CONTINUED OBJECTION TO CLAIM OF NKAYLA BARNES, CLAIM NUMBER 28 9-7-18 [324]

Final ruling:

This is the objection of the former debtor-in-possession to the claim of N'Kayla Barnes, Claim No. 28 on the court's claims register. The objection was originally heard on October 31, 2018 and the hearing was continued to this date. On December 4, 2018, on the motion of the then debtor-in-possession, this case was converted from chapter 11 to chapter 7. As a result of the conversion, the former debtor-in-possession no longer has standing to prosecute this objection. Accordingly, the objection will be overruled by minute order for lack of standing. No appearance is necessary.

24. 18-25892-D-7 MOH-1 — MICHELA MONNOT — MOTION TO AVOID LIEN OF SIERRA CENTRAL CREDIT UNION 12-17-18 [19]

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.

25. 18-27894-D-12 — JEFFREY DYER AND JAN WING-DYER — STATUS CONFERENCE RE: VOLUNTARY PETITION 12-20-18 [1]

26. 18-27912-D-7 JUAN/LILIA GUZMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1 — 1-8-19 [12]
TRAVIS CREDIT UNION VS.

27. 19-20014-D-7 WARREN SIMPSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
KH-1 — 1-4-19 [8]
2015-3 IH2 BORROWER, LP VS.

28. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. IWC-4 — CONTINUED STATUS CONFERENCE RE: MOTION TO EXTEND TIME AND/OR MOTION FOR SANCTIONS
15-2122 — 10-17-18 [153]
MCFARLAND V. CARTER ET AL

Final ruling:

Pursuant to a stipulated order signed January 14, 2019, this status conference is removed from calendar. No appearance is necessary.

29. 11-28141-D-12 VICTOR/LYUBOV ANDREYCHENKO — MOTION TO VALUE COLLATERAL OF SUNSHINE FINANCIAL GROUP, LLC
MS-1 — 1-9-19 [163]

Tentative ruling:

This is the debtors' motion to value the collateral of Sunshine Financial Group, LLC ("Sunshine"); namely, a third deed of trust against the debtors' residence. The motion was noticed 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 states the moving parties are the debtors in this chapter 12 case, having filed their petition on March 31, 2011. It also states that the value of the debtors' home at the time of filing was $295,000 and that there were first and second deeds of trust against the property totaling $501,243 in amount. As a result, the debtors claim, there is no equity in the property to secure Sunshine's third deed of trust, and the value of its security interest should be set at $0.00.

The following crucial facts are not mentioned in the moving papers:

(1) that Sunshine was not listed as a creditor on the debtors' schedules or master address list, and therefore, never received notice of the case;

(2) that Sunshine was not provided for in any way in the debtors' confirmed chapter 12 plan or the order confirming the plan;

(3) that no predecessor-in-interest of Sunshine was listed as a creditor on the debtors' schedules or master address list, no predecessor-in-interest ever received notice of the case, and no predecessor-in-interest was provided for in the plan;

(4) that the debtors completed their chapter 12 plan in March of 2017, almost two years ago;

(5) that the debtors received a chapter 13 discharge on September 8, 2017, 16 months ago; and

(6) that a final decree was entered and the case was closed on September 25, 2017.

These undisclosed facts notwithstanding, the motion blithely states that "[t]he Amended Schedules filed in this case also disclose a debt owed to [Sunshine]" (Debtors' Motion, DN 163, ¶ 5), and indeed, on January 9, 2019, 16 months after they received their discharge and almost 16 months after the final decree was entered, the debtors filed an amended Schedule D on which they purported to add Sunshine as a creditor, holding a third deed of trust against their residence.

The court intends to deny the motion because the debtors have submitted no authority, and the court is aware of none, for the proposition that a debtor may value a secured claim, the holder of which is notified of the bankruptcy case for the very first time after the plan has been confirmed and completed, after the discharge has been entered, and after the case has been closed. There are multiple issues raised by these facts; to name a few:

(1) whether the fundamental concepts of procedural due process preclude the relief requested;

(2) whether the provision in the confirmed plan that property of the estate would revest in the debtors on confirmation precludes the debtors from valuing Sunshine's claim, given that § 506(a)(1) applies only to liens on property in which the estate has an interest;

(3) to the extent, if any, the debtors' residence did not revest in them on confirmation, whether its abandonment to them when the case was closed, pursuant to § 554(c), prevents the application of § 506(a)(1) here; and

(4) whether the debtors are bound by judicial estoppel from raising a fact – the existence of a third deed of trust on their property – that was omitted from the schedules and the confirmed plan the court relied on in granting them their discharge.

The court also observes that the failure of the moving papers to disclose the critical facts listed above appears deliberate, and if it was not, it was certainly done without the essential review of the docket that would have revealed these facts

to the debtors' new attorney. In either case, it appears the filing of the motion constituted a violation of the attorney's duty not to present claims that are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

The court will hear the matter.

30.	10-42050-D-7 12-2381 BURKART V. LAL	VINCENT/MALANIE SINGH GJH-1	MOTION FOR EXAMINATION (JIA LAL) 1-2-19 [128]

CASE CLOSED: 05/13/2015

31.	10-42050-D-7 12-2410 BURKART V. NARESH	VINCENT/MALANIE SINGH GJH-1	MOTION FOR EXAMINATION (RAM NARESH) 1-2-19 [139]

CASE CLOSED: 10/26/2015

32.	19-20057-D-7 MWM-325 JACKSON SQUARE PROPERTIES, LLC VS.	DRUCILLA LOVETT	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-9-19 [15]

33. 17-20859-D-7 JLK-001 — TIA LYN ELLIOTT — MOTION TO AVOID LIEN OF PERSOLVE, LLC
1-9-19 [57]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Persolve, LLC. The motion will be denied because (1) the moving party failed to serve Persolve in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b); and (2) the motion is not accompanied by evidence establishing its factual allegations and demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D).

The moving party served Persolve (1) by certified mail to the attention of an officer; (2) by certified mail to the attention of a corporate agent for service of process, Prentice-Hall Corp. System, Inc., in Delaware; and (3) by first-class mail to the attention of Robert H. Engilman. The first two methods were insufficient because a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as Persolve, must be by first-class mail, not certified mail. Compare Rule 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h). The second method was insufficient for the additional reasons that (1) according to the records of the Delaware Secretary of State, Prentice-Hall is not the registered agent for service of Persolve; (2) service was addressed to Prentice-Hall but did not identify the entity on whose behalf it was being served as agent. The third 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 there is no indication Robert H. Engilman serves in any of these capacities for Persolve. He is not listed as a manager or member on Persolve's most recent Statement of Information filed with the California Secretary of State.

The second problem is that the motion gives the date of recording of Persolve's abstract of judgment, the date the debtor filed her bankruptcy petition, that the debtor had equity in her property at the time which she fully exempted, and that Persolve's judgment lien impaired the debtor's exempted equity. The moving papers give no figures and provide no evidence to support these conclusions. They do not inform Persolve of the alleged value of the property, the amount of unavoidable liens, if any, or the amount of the debtor's claim of exemption. As a result, the moving papers gave Persolve insufficient information to determine whether to oppose the motion or the court whether to grant it.

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

34. 12-30983-D-7 LBG-2 — KEVIN INGALLS — CONTINUED MOTION TO AVOID LIEN OF MCT GROUP
11-29-18 [25]

35.	17-20689-D-7 DNL-9	MONUMENT SECURITY, INC.	MOTION FOR AUTHORITY TO USE ESTATE FUNDS 1-9-19 [490]
36.	18-22453-D-7 HSM-2	ECS REFINING, INC.	CONTINUED MOTION TO ABANDON 12-26-18 [912]
37.	19-20256-D-11	BULLDOG DEVELOPMENT COMPANY	ORDER TO SHOW CAUSE 1-16-19 [9]