UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 9, 2016 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.	12-32504-D-11	THOMMAS/VIRGINIA YARAK	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-9-16 [617]

Final ruling:

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

2.	13-33804-D-7 BHS-3	RHONDA STIJAKOVICH-SANTILLI	CONTINUED STATUS CONFERENCE RE: OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR MOTION TO SET ASIDE 11-14-14 [100]

Tentative ruling:

On December 15, 2015, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") issued its opinion, Whatley v. Stijakovich-Santilli (In re Stijakovich-Santilli), 542 B.R. 245 (9th Cir. BAP 2015), vacating this court's orders overruling the

trustee's objections to the debtor's claim of exemption in real property and remanding the case to this court for further proceedings consistent with the BAP's opinion. The parties have briefed the issues in light of the BAP's opinion. For the following reasons, the court concludes that the debtor fraudulently claimed the exemption, and thus, that the trustee's objection to the exemption was timely. The court also concludes the debtor was not and is not entitled to the exemption. Thus, the trustee's renewed objection will be sustained and the exemption will be disallowed. In addition, the court's order deeming the property abandoned will be vacated.

The BAP concluded, first, that this court erred as a matter of law in ruling that the trustee was not entitled to the extended objection deadline provided by Rule 4003(b)(2)[1] because he failed to sufficiently investigate the claim of exemption within the shorter time permitted under Rule 4003(b)(1). Stijakovich-Santilli, 542 B.R. at 259. Second, the BAP held that this court erred in concluding that the debtor's false statements made later in the case were not evidence that she fraudulently asserted the claim of exemption at the time she made it. Id. at 260. Thus, this court now takes those two erroneous conclusions out of the equation for the purpose of determining whether the debtor fraudulently claimed the exemption, within the meaning of Rule 4003(b)(2). The court examines the facts in accordance with the BAP's holding that the court "should apply the usual definition of fraud, except the damages requirement, which has no bearing on the question of exemptions." Id. at 256.

Applying that definition of fraud, the first two questions are whether the debtor made a false representation of a material fact and whether she knew it to be false at the time she made it. See Stijakovich-Santilli, 542 B.R. at 255. On her petition, the information in which she stated under penalty of perjury was true and correct, the debtor listed her street address as 9817 Beckenham Dr., Granite Bay, California. On her Schedule A, she listed the property at that address, along with two other real properties, as owned by her. On her Schedule I, she listed income of $3,400 per month from a "Room Mate," as well as $3,800 in rental income from the other two properties. In signing a declaration regarding her schedules, the debtor testified under penalty of perjury that she had read them and they were true and correct to the best of her knowledge, information, and belief. However, the truth was that the Beckenham Drive address was not the debtor's street address, as that term is commonly understood, in that she was not living there on the petition date, October 15, 2013. Further, the debtor did not have a "Room Mate" at all; instead, she rented the entirety of the Beckenham Drive property to a family of four, the Mendoza family, during the entire period between June 16, 2012 and June 29, 2014 under a written lease agreement. Joanna Mendoza has testified the debtor did not live at the property at any time during the Mendoza family's tenancy.

On her Schedule C, the debtor claimed a $75,000 exemption in the Beckenham Drive property under Cal. Code Civ. P. § 704.950.[2] Six weeks later, she filed an amended Schedule C, also signed under penalty of perjury, on which she increased the value of her claimed exemption in the same property to $175,000. In both instances, as the BAP observed, the debtor implicitly "represent[ed] that the underlying facts support[ed] the claim of exemption, including the facts that the alleged homestead was her 'principal dwelling' and that she resided there at the relevant times." Stijakovich-Santilli, 542 B.R. at 256. Those underlying factual representations were not true at the times the debtor signed the original and amended schedules; that is, at the times the debtor implicitly made them.

The debtor next made false statements concerning her residency in response to

the trustee's original objection to the exemption. From the allegations in the objection, the debtor must have known the critical issue was whether she was residing in the Beckenham Drive property at the time she filed her petition and continuously thereafter. The trustee opened the objection by quoting the definition of a homestead for purposes of California's exemption statutes – "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." Trustee's Objection, filed Aug. 18, 2014, at 2:5-9, quoting Cal. Code Civ. Proc. § 704.710(c). The trustee then alleged that "Debtor did not reside at the Subject Property on the date her Chapter 7 petition was filed and did not live there any time during 2013." Id., at 2:11-12. The trustee based his allegation on the debtor's claim in her 2013 tax returns that the property was 100% rented out in 2013.

The debtor opposed the objection, but not by admitting she did not physically reside at the property, as was the truth, and not by arguing she was basing her claim of exemption on keeping her remaining possessions at the property while staying with friends and traveling, as she now claims. Instead, in her opposing declaration, the debtor testified under oath as follows: "I have been residing at my home at 9817 Beckenham, Granite Bay, California ("my Home") continuously for all of 2012, 2013 and all of 2014 through the date of this declaration. During 2012, 2013, and 2014 I have rented rooms in my Home to roommates in order to meet my income needs." Debtor's Declaration, filed Sept. 9, 2014, at 2:1-5. Those statements were false at the time the debtor made them.

In the opposition itself, which she signed and filed pro se, the debtor repeatedly referred to the Beckenham Drive property as "debtor's Home," her "principle [sic] dwelling," and her "primary residence," and repeatedly referred to her "roommates." See Debtor's Opposition, filed Sept. 9, 2014. She also contended the trustee "lack[ed] any credibility for making [the] assumption and conclusion" (id. at 3:5-6) that she was not residing at the home. As it turns out, the trustee's assumption and conclusion were accurate, and the debtor's characterizations of the property as her home, her principal dwelling, and her primary residence and her characterizations of her tenants as her roommates were false at the time they were made. Further, obviously, the debtor knew where she was physically residing or staying during the two-year period of the Mendozas' tenancy. Thus, she must have known at the time she made the above-described statements and characterizations that they were false.

The next question is whether the debtor made the false statements with the intent to deceive the trustee and creditors. In response to the trustee's renewed objection to the exemption, and in particular, in response to Ms. Mendoza's testimony, the debtor changed her story. She no longer claimed to have resided at the property in 2012, 2013, and 2014, although she continued to characterize the property as "Debtor's home." Instead, the debtor claimed she had sold most of her personal belongings and kept those that remained, except clothes, at the Beckenham Drive property. As the trustee points out, where required to do so on her Statement of Financial Affairs, the debtor had failed to disclose any gifts or sales of personal belongings. In her new story, she also claimed, for the first time, that she had made her original statements about where she was residing in reliance on what her then attorney had told her:

> [M]y former attorney in this case told me that as long as I kept most of my personal belongings at debtor's home, and did not reside primarily at any other

> home, then the court would consider debtor's home as my primary residence. I based my decisions on my attorney's advice that renting debtor's home to roommates/tenants and staying at various friends' homes and traveling did not preclude debtor's home from being my primary residence. Accordingly, even though I had rented out debtor's home 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 debtor's residence.

Debtor's Decl., filed Dec. 2, 2014 ("Decl."), at 2:6-20.

This testimony is in direct material conflict with the debtor's declaration and opposition to the trustee's original objection. And as already discussed, the debtor was well aware when she opposed the original objection that the critical issue was whether or not she was physically residing in the property. The court finds that if the facts were as the debtor claimed in opposition to the renewed objection – that she believed keeping her belongings at the property although she herself did not live there would be sufficient to support her exemption – then she had every reason to disclose those facts in response to the trustee's original objection, if not in her bankruptcy schedules. Instead, apparently believing the best defense is a good offense, the debtor attacked the trustee's credibility:

> First and primarily, the trustee's sole basis for its objection and request for relief is his assumption that since debtor stated on her 2012 and 2013 income tax returns that she was receiving rental income with respect to her home at 9817 Beckenham Drive, Granite Bay, CA ("debtor's Home"), then she must not have been residing at debtor's Home during 2013. However, that baseless assumption is incorrect. Even though debtor has been receiving rental income with respect debtor's Home during 2013, debtor had resided at debtor's Home during all of 2013.

Debtor's Opposition, filed Sept. 9, 2014, at __. As we now know, the trustee's assumption was not baseless and it was not incorrect.

The debtor's only possible motivation for withholding what she now claims were the true facts in her schedules and for making these false statements in response to the original objection was to deceive creditors, the trustee, and the court as to the circumstances surrounding her claimed exemption. If the debtor "always honestly and reasonably believed her former attorney that as long as 'she kept most of her personal belongings at the Subject Property and did not reside primarily at any other home that the Court would consider the Subject Property as her residence'" (Debtor's Responding Brief, filed Feb. 22, 2016, at 5:1- 3), she would have presented that belief to the court when the trustee challenged her exemption. Instead, she presented an entirely different and untrue version of the circumstances. The court concludes the debtor intended to deceive others so as to claim an exemption she was not entitled to.

The debtor's repeated use of the term "roommates" is significant. In fact, the debtor had no roommates, at least no roommates at the Beckenham Drive property. The lease agreements in effect during the entirety of the Mendozas' tenancy explicitly recognized that the debtor, as landlord, would have very limited rights to enter the dwelling. The lease agreements stated, "California law allows Owner/Agent or his/her employee(s) to enter the premises for certain purposes during normal business hours.

The Owner/Agent will provide written notice to the Resident prior to the entry of the dwelling unit whenever required by state law. (Civil Code Section 1954.)" Trustee's Exhibits H and J, filed Dec. 8, 2014, § 15. The debtor had no legal right to physically reside at the Beckenham Drive property on the petition date and for at least eight months thereafter. Further, she had had no right of residency for at least 14 months prior to the petition date.

The debtor also testified in response to the renewed objection that her attorney had told her at the outset the court would value her real estate as of the petition date. She said she "later discovered that was not true, and that if the value of [her] real estate increased during [her] bankruptcy that the trustee could sell it to pay creditors." Decl. at 2:24-26. It is clear from this testimony that the values of her real properties and her ability to keep them were of primary concern to the debtor when she commenced the case and made the representations on the petition and schedules.

And five months later, after the trustee had undertaken to sell one of the debtor's other properties and the debtor had discharged her attorney – and before the trustee objected to her exemption, the debtor filed a motion to compel the trustee to abandon all three properties. She included what she claimed were the market values of and liens against the three properties and, for the Beckenham Drive property, the amount of her exemption claim. Her goal was to convince the court that there was no non-exempt equity in any of the three. As to Beckenham Drive, the debtor added, "Debtor has an exemption of $175,000 on the Home. No objections to the exemption have been filed with the court." Motion to Compel Abandonment, filed April 29, 2014, at 2:27-3:1. Her calculations showed that, but for her homestead exemption, there was significant equity in the property.

Finally, the trustee has submitted, pursuant to Fed. R. Civ. P. 60(b)(2) (newly-discovered evidence) and (b)(3) (fraud or misconduct), incorporated herein by Rule 9024, a declaration of the debtor's then attorney, Randall Ensminger, who testifies, "I was not advised that the Debtor rented out the [Beckenham Drive property] exclusively to other parties, but rather recall being advised that she had roommates at the Subject Property and that it was also her primary residence." Trustee's Request for Judicial Notice, filed Feb. 10, 2016, Ensminger Decl. at 2:7-11. He adds, "I would not have advised the Debtor, based on her renting out the Subject Property exclusively to others, that as long as she kept most of her personal belongings at the Subject Property and did not reside primarily at any other home, that the Court would consider the Subject Property as her residence." Id. at 2:11-14. Mr. Ensminger's testimony directly contradicts the debtor's.

The trustee's submission of Mr. Ensminger's declaration is appropriate under both subsections of Rule 60(b). Mr. Ensminger's testimony demonstrates the trustee could not have obtained his testimony in time to move for reconsideration under Fed. R. Civ. P. 59(b) (Rule 9023); that is, within 28 days from entry of the court's order. Thus, Rule 60(b)(2) applies. In addition, Mr. Ensminger's testimony was necessitated only after the debtor materially changed her story in response to the trustee's renewed objection. The court will conclude in this ruling that the debtor fraudulently claimed the exemption; the same conduct justifies the trustee's submission of the declaration under Rule 60(b)(3).

The debtor objects to the court's consideration of the declaration as it was submitted more than one year after entry of the court's order on the trustee's renewed objection. See Fed. R. Civ. P. 60(c)(1). However, as the trustee points out, the trustee was precluded from filing the declaration with this court during the

time his appeal was pending. Excluding that time, the trustee's filing of the declaration with this court was within the one-year period. The debtor also cites the BAP, which noted that the trustee could have sought to continue the hearing on his renewed objection or could have filed a Rule 60(b) motion after the court ruled on the objection. However, the trustee was not required to do so. He apparently believed he could succeed on appeal even without the declaration; as it turns out, he was correct. Finally, the BAP said nothing that would preclude this court from considering the declaration.[3]

The debtor is correct that the declaration does not contain the kinds of facts of which the court may take judicial notice. Instead, like the trustee's and the debtor's own declarations, Mr. Ensminger's declaration is evidence the court may consider directly, without the need to take judicial notice of it. Finally, the debtor attempts to cast doubt on Mr. Ensminger's credibility by claiming he was wrong when he advised her that "the determination of non-exempt value should be determined as of the date of the Debtor's bankruptcy petition." Debtor's Responding Brief, at 6:5-7. Assuming without deciding that Mr. Ensminger made such a statement, whether it was legally correct or incorrect is not relevant to the credibility of his factual statements.[4]

The court concludes from all of this evidence, not just Mr. Ensminger's declaration, and especially from the debtor's "shifting story" about her residency in the Beckenham Drive property, as the trustee puts it, and her concealment of her version of Mr. Ensminger's advice until forced to use it by Ms. Mendoza's declaration, that the debtor made the false representations discussed above with the intent to deceive the trustee and the court into believing there was no non-exempt equity in the property, and thus, so as to be able to retain the Beckenham Drive property – property which, as discussed below, she would not have been entitled to exempt had she been truthful about where she was residing.

The debtor's response to the trustee's brief following the remand deprives her of any credibility on the issue of her intent to deceive. In that response, she claims she "has consistently stated" (Debtor's Responding Brief, filed Feb. 22, 2016, at 3:5) that her attorney told her as long as she kept most of her belongings at the property and did not reside primarily in another home, then the court would consider the property to be her primary residence. For the proposition that she has "consistently" offered this definition, she cites her declaration in opposition to the trustee's renewed objection. She said nothing about it on her schedules or in response to the trustee's original objection, in which, instead, she insisted she resided at the property throughout 2012, 2013, and 2014 and only "rented rooms to roommates."

The debtor also now claims

> [t]here is no evidence that Debtor's statements in this case varied. She had always stated that she resided at the Subject Property. When Trustee questioned that Debtor had resided at the Subject Property, Debtor, without hesitation, stated the foregoing definition [about keeping her belongings at the property and not residing elsewhere] to explain what she meant by residing at the Subject Property.

Id. at 5:13. Not so. The debtor kept this definition to herself the first time the trustee challenged her exemption on the basis that she did not reside at the property, instead blatantly insisting she had been residing at the property continuously for all of 2012, 2013, and 2014, renting "rooms in the home to

roommates." The truth was that the debtor rented the entire property, not just rooms in it, to the Mendozas and retained for herself no right to reside in the property at all. Further, she did not physically live there at any time during the Mendozas' two-year tenancy. She offered this new definition of what she meant by "residing at the property" only after the trustee discovered the Mendozas' exclusive occupancy of the property.

The court concludes the debtor made false statements, knowing them to be false at the time, with the intent to deceive the trustee, her creditors, and the court into believing she was entitled to her homestead exemption. Finally, the court concludes, with the BAP, that "[t]he Trustee took the Debtor at her word and justifiably relied on the schedules and her declaration as to their accuracy." Stijakovich-Santilli, 542 B.R. at 259. Therefore, the court concludes that the debtor fraudulently claimed the exemption in the property, and thus, that the trustee's objection to the exemption was timely pursuant to Rule 4003(b)(2).

The court also concludes that the debtor was not and is not entitled to the exemption because the property was not the principal dwelling in which she resided on the petition date and thereafter. "The essential factors in determining residency for homestead purposes are physical occupancy of the property and the intent to live there." In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992), citing Ellsworth v. Marshall, 196 Cal. App. 2d 471, 474 (1961). A temporary absence from a residence is not necessarily a bar to a homestead exemption. Dodge at 607. The applicable code section, CCP § 704.710, subd. (c), was amended in 1983 to delete the word "actually" from before the word "reside." The purpose was to "to avoid a possible construction that a person temporarily absent (such as a person on vacation or in the hospital) could not claim a dwelling exemption for his or her principal dwelling, . . . , merely because the person is temporarily absent, even though the dwelling is the person's principal dwelling and residence." See In re Bruton, 167 B.R. 923, 926 (Bankr. S.D. Cal. 1994), citing 17 Cal.L.Rev.Comm. Reports 854 (1983).

Debtors have been held to be temporarily absent from their home, and thus, entitled to a homestead exemption where they rented an apartment in another city for employment purposes, returning to their home on weekends and holidays. See In re Pham, 177 B.R. 914, 919 (Bankr. C.D. Cal. 1994); Bruton, 167 B.R. at 926; Dodge, 138 B.R. at 607. On the other hand, the exemption has been disallowed where debtors have moved from their home, to be closer to their school or because they could no longer afford the mortgage, and leased out their home to tenants. See In re Anderson, 824 F.2d 754, 757 (9th Cir. 1987); In re Yau, 115 B.R. 245, 249 (Bankr. C.D. Cal. 1990)). Here, the debtor rented the entirety of the Beckenham Drive property to the Mendozas; she could not and did not live there on weekends and holidays; and she left very few possessions behind – mostly the types of outdoor patio items a landlord might leave for a tenant. Assuming but not deciding that the debtor had no "principal dwelling" elsewhere, that is of no moment. What is relevant and unequivocal is that the Beckenham Drive property was not the debtor's principal dwelling on the petition date.

Finally, the parties have addressed the issue of the burden of proof. The trustee observes that this department has adopted a different position on the issue since its orders overruling the trustee's objections were entered. This department agrees with other departments of this court that have recently held that for exemptions claimed under California exemption law, as was the debtor's in this case, the burden of proof is on the debtor. See In re Tallerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. June 8, 2015). The debtor, on the other hand, contends this court must follow the BAP's

citation to Rule 4003(c) and assign the burden of proof to the trustee. However, the BAP recognized the cases to the contrary and expressly left the issue to this court on remand. Stijakovich-Santilli, 542 B.R. at 255, n.6. The issue causes no difficulty. The court concludes that to the extent the burden of proof is on the trustee, he has carried the burden and demonstrated that the debtor claimed the exemption fraudulently and that she is not entitled to the exemption. To the extent the burden of proof is on the debtor, she has not carried the burden of proving either that she did not claim the exemption fraudulently or that she is entitled to the exemption. Regardless of who has the burden of proof, the court concludes the trustee's objection was timely under Rule 4003(b)(2) and the debtor is not entitled to the exemption.

For the reasons stated, the court will sustain the trustee's renewed objection and disallow the exemption. In addition, the court will grant the trustee's motion to vacate the order of abandonment of the Beckenham Drive property as the order was procured by the debtor solely by virtue of the exemption claim the court now disallows. The court will hear the matter.

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1 **Unless otherwise noted, all rule references are to the Federal Rules of Bankruptcy Procedure.**

2 **As the BAP pointed out, that code section does not create a homestead exemption. However, it was always understood by both parties and the court that the debtor was claiming an exemption in the property as a homestead.**

3 **Concerning the declaration, the BAP said, "The bankruptcy court is in the best position to consider all of the evidence and make appropriate factual findings." Stijakovich-Santilli, 542 B.R. at 260.**

4 **The statement itself, as phrased by the debtor, is confusing. Exemptions are determined as of the petition date. Nadel v. Mayer (In re Mayer), 167 B.R. 186, 188 (9th Cir. BAP 1994). On the other hand, post-petition appreciation belongs to the estate. In re Hyman, 967 F.2d 1316, 1321 (9th Cir. 1992). "[W]hat is frozen as of the date of filing the petition is the value of the debtor's exemption, not the fair market value of the property claimed as exempt." Gebhart v. Gaughan (In re Gebhart), 621 F.3d 1206, 1211 (9th Cir. 2010).**

3.	11-48111-D-7 DNL-2	OSCAR RIOS	MOTION TO SUBSTITUTE REAL PROPERTY IN INTEREST TO PURSUE AVOIDANCE ACTION 2-8-16 [71]

Final ruling:

This hearing has been continued to April 6, 2016, at 10:00 a.m., by order approving the stipulation of the parties.

4.	11-48111-D-7 DNL-3	OSCAR RIOS	MOTION TO AVOID LIEN OF JAMES LENAU 2-8-16 [76]

Final ruling:

This hearing has been continued to April 6, 2016, at 10:00 a.m., by order approving the stipulation of the parties.

5. 15-27611-D-7 TERRY/VERA ADAMS
USA-1
UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-16 [31]

Final ruling:

This motion was granted by minute order entered on February 10, 2016. As such, the matter removed from calendar. No appearance is necessary.

6. 16-20315-D-7 ADAM POWELL

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
1-21-16 [5]

7. 14-25816-D-11 DEEPAL WANNAKUWATTE
MAC-1

MOTION TO COMPEL ABANDONMENT
2-12-16 [948]

Final ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion will be denied because the moving party served only the chapter 7 trustee, his attorney, the attorney for the trustee in the IMG case, two creditors, and two of the several attorneys who have filed requests for special notice in this case. The moving party failed to serve the remaining attorneys and creditors who have filed requests for special notice, and failed to serve any of the other creditors in the case.

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)).

Because the moving party failed to serve all creditors, the motion will be denied by minute order. No appearance is necessary.

8.	15-29118-D-7 WFM-1 CITIMORTGAGE, INC. VS.	KENNETH JONES	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-2-16 [16]

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 debtor received his discharge on February 23, 2016 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

9.	14-25820-D-11 DMC-19	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RAMONA DAHNERT AND MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY, LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S) 1-27-16 [807]

10.	14-31725-D-11	TAHOE STATION, INC.	ORDER TO SHOW CAUSE RE DISMISSAL 2-11-16 [314]

Final ruling:

The only party to file a response in regard to the court's Order to Show Cause re Dismissal was the prior Chapter 11 Trustee. Pursuant to the Trustee's request the hearing on the Order to Show Cause is continued to May 18, 2016 at 10:00 a.m. Unless the Trustee files further opposition or response to the Order to Show Cause on or before May 9, 2016, the case will be closed on May 18, 2016 without the need for any party to appear. No appearance is necessary on March 9, 2016.

11. 14-22526-D-7 DAVID JONES
PA-11

Tentative ruling:

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID CLARK JONES AND PAMELA JONES
2-10-16 [181]

This is the trustee's motion for approval of a compromise between himself, on the one hand, and the debtor and the debtor's spouse, on the other hand. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. The court, however, has a service concern.

Wally Cheplick was not served with the motion. Mr. Cheplick was not scheduled as a creditor by the debtor. However, he filed an adversary complaint against the debtor seeking to deny the debtor's discharge and to determine that the debtor's debt to him was nondischargeable. The court ruled against Mr. Cheplick on both issues and a final judgment has been entered in the adversary proceeding. It appears to have been undisputed, however, that Mr. Cheplick was a "creditor," as defined by the Bankruptcy Code, at the time this case was filed, by virtue of an arbitration award in the amount of $55,695. The court's judgment in the adversary proceeding did not change Mr. Cheplick's status as a creditor. The court recognizes that Mr. Cheplick has not filed a proof of claim in this case and that the claims bar date has run. Nevertheless, under Fed. R. Bankr. P. 2002(a)(3), it appears Mr. Cheplick should have been served with the motion.

For the reason stated, the court intends to deny the motion, or alternatively, to continue the hearing to allow the trustee to serve Mr. Cheplick. The court will hear the matter.

12. 14-21028-D-7 DANNY CAAMAL
SSA-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN ALTMAN, PC FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S)
2-11-16 [55]

13. 15-29928-D-7 TONJA MOSS
JDM-1
THOMAS MINERO VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-5-16 [11]

14. 14-31929-D-7 MEDICI LOGGING, INC. MOTION FOR COMPENSATION FOR
JWR-1 JOHN W. REGER, CHAPTER 7
TRUSTEE
2-8-16 [93]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 326. As such, the court will grant the motion by minute order. No appearance is necessary.

15. 15-29638-D-7 ERNESTEAN HENDERSON MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 2-5-16 [14]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court'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 debtor is 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. 15-28343-D-7 JON PETERSON MOTION FOR RELIEF FROM
WFM-1 AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 1-21-16 [18]

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 debtor received his discharge on February 5, 2016 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

17. 15-24747-D-7 RAYMOND POQUETTE — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
BHS-4 — 12-24-15 [61]

Tentative ruling:

This is a continued hearing on the trustee's objection to the debtor's claim of a $175,000 exemption in an asset the debtor describes as "Property settlement: Residence at 14530 Lynshar Rd., Grass Valley, CA 95949." The debtor's former spouse, Paula Poquette, filed a response in which she purported to join in the trustee's objection.[1] At the debtor's request, the court continued the hearing to allow the debtor additional time to file opposition. The debtor has now filed a response and an amended response, and Paula Poquette has filed a reply to both of those.[2] For the following reasons, the objection will be sustained in part and overruled in part. In addition, the court will annul the automatic stay retroactive to the petition date to permit the debtor and Ms. Poquette to proceed with their pending state court appeal.

The debtor claims the asset as exempt under Cal. Code Civ. Proc. §§ 704.720 and 704.180.[3] The latter is easily dealt with. Section 704.180 provides for the exemption of relocation benefits for displacement from property acquired for public use. As the debtor makes no argument that the asset he claims as exempt constitutes relocation benefits or has anything to do with the acquisition of property for public use, the trustee's objection will be sustained in part and the claim of exemption under § 704.180 will be disallowed.

Turning to the claim of exemption under the homestead exemption statute, § 704.720, the court notes, first, that the debtor refers to a property settlement whereas there is nothing in the record to indicate the debtor and Ms. Poquette ever agreed to a property division. It appears instead the debtor is referring to his interest in the real property as awarded by the Nevada County Superior Court by judgment filed June 17, 2014 in the debtor's and Ms. Poquette's marital dissolution proceeding (the "Judgment" or the "State Court Judgment").[4]

Concerning that property, the Judgment provided: "The Court finds Husband has a $67,000 separate property interest in the real property with improvements thereon located at [Lynshar Road address] and all other equity in this property is a community asset subject to division." Trustee's Ex. C, filed Dec. 24, 2015, at 3:8-11. The court ordered the property to be placed on the market "and all proceeds, after payment of all standard costs of sale and reimbursement of $67,000 to Husband, are community." Id. at 3:12-14. The court ordered the debtor to vacate the property by June 30, 2014, awarding temporary exclusive use to Paula Poquette, who was to select a real estate broker and set the selling price. The court reserved jurisdiction to make any orders necessary to carry out the terms of the sale. Finally, the court ordered that spousal support arrears of $9,188.51 and a $19,697 personal property equalizing payment, both due from the debtor to Ms. Poquette, would be deducted from the debtor's share of the sale proceeds. The debtor continues to reside in the property; according to Ms. Poquette, his refusal to leave has prevented her from selling the property.

Notwithstanding the Judgment, the trustee contends the debtor is not entitled to exempt any portion of the property as a homestead because the debtor is not an owner of the property, having conveyed his interest in it to Paula Poquette over ten years ago by way of an Interspousal Transfer Deed (the "Interspousal Deed") in an

attempt to protect the property from creditors. The trustee has submitted a copy of the Interspousal Deed (as has the debtor), and has also submitted copies of pages marked pages 1 and 4 of a document bearing the caption of a San Diego County Superior Court case, William C. Knoll v. Thermotec, entitled "Defendants Small Claims Appeal."[5] According to the trustee's declaration, the debtor testified at the meeting of creditors that (1) his company, Thermotec, lost the Knoll case and the debtor filed an appeal on January 28, 2005, and (2) the debtor deeded the Lynshar Road property to Paula Poquette on or about August 16, 2005 to avoid a possible judgment lien being placed on the property.

In the court's view, the State Court Judgment, entered ten years after the Interspousal Deed was recorded, was sufficient to give the debtor an interest in the property sufficient to entitle him to claim a homestead exemption. The trustee quotes § 704.720 in full but provides no other authority for the proposition, implicit in his argument, that the Interspousal Deed prevails over the State Court Judgment for the purpose of fixing the debtor's interest in the property. The court finds nothing in § 704.720 to support that conclusion. The trustee relies on the Judgment for the conclusion that the debtor has no possessory interest in the property (under the Judgment, the debtor was required to vacate the property by June 30, 2014), but the trustee overlooks the portion of the Judgment unequivocally awarding the debtor both separate and community property interests in the property. Nor does § 704.720 appear to elevate the right to a possessory interest over actual current residency and actual interest in the property for the purpose of the right to a homestead exemption.[6]

Ms. Poquette expands the argument – she claims the State Court Judgment gave the debtor only an interest in personal property, not an interest in the real property itself. She states: "The property interests of the debtor in this Family Court Judgment are not in the real property residence because Paula Poquette owns the real property. It is, however, from the proceeds of sale once the real property is sold that the debtor's interests arise. Thus, the debtor has an interest in personal property, i.e., the proceeds of sale, and not an interest in real property." Paula Poquette's Response, at 5:3-7. Ms. Poquette cites no authority for this proposition other than the California Civil Code sections defining real and personal property, which are beside the point. In the court's view, the unambiguous language of the State Court Judgment determines the issue: "The Court finds Husband has a $67,000 separate property interest in the real property . . . and all other equity in this property is a community asset . . . ." (Emphasis added.)

For his part, the debtor believes the state court should have awarded him the full interest in the property, reserving nothing for Ms. Poquette. Thus, the debtor appealed the Judgment and he devotes a large portion of his response to the trustee's objection to reciting what he perceives to be the many flaws in the Judgment. This court is not a court of appeal from the state court for the purpose of reviewing the Judgment and determining whether to alter its conclusions. Thus, the court will not consider the many factual allegations set forth in the debtor's response (although the court assures the debtor it has read them). These are matters that should and must be left to the state courts, and in particular in this instance, to the state appellate court.

The debtor appealed the State Court Judgment before this case was commenced; the parties proceeded with the appeal post-petition and the matter was argued and taken as submitted on December 14, 2015. On January 4, 2016, the appellate court, having learned of the debtor's bankruptcy, vacated the submission of the case sua sponte, adding that "[t]he case will be submitted upon further order of the court

after the bankruptcy stay is lifted." Debtor's Ex. "I-2."[7] This court will now lift the stay to permit the parties to the appeal to proceed with the appeal and to notify the appellate court that the stay has been lifted. If the outcome of the appeal results in the parties having rights in the property different from those awarded by the State Court Judgment, this court will revisit the issue of the debtor's claim of exemption upon subsequent objection.

Finally, the debtor argues that the trustee and Ms. Poquette are attempting to enforce the State Court Judgment in violation of the automatic stay, and he states this court should issue sanctions and punitive damages for him. The debtor is not correct. "The automatic stay does not apply to proceedings initiated against the debtor if the proceedings are initiated in the same bankruptcy court where the debtor's bankruptcy proceedings are pending." Snavely v. Miller (In re Miller), 397 F.3d 726, 730 (9th Cir. 2005).

For the reasons stated, the objection will be sustained as to the § 704.180 claim and overruled as to the § 704.720 claim. In addition, the court will annul the stay retroactive to the date of the debtor's petition commencing this case, June 12, 2015, to permit the debtor and Ms. Poquette to proceed with the state court appeal. The court will hear the matter.

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1 The rule governing joinder of persons does not apply in contested matters. See Fed. R. Civ. P. 19, incorporated in adversary proceedings by Fed. R. Bankr. P. 7019, but not in contested matters. Fed. R. Bankr. P. 9014(c). In the interest of completeness, however, the court will consider Ms. Poquette's response to and joinder in the objection and her reply to the debtor's responses.

2 Ms. Poquette argues the court should not consider the amended response because (1) the debtor was not authorized by the court to file an amended response; and (2) the amended response was filed after the deadline imposed at the initial hearing. (The original response was timely filed.) In the interest of completeness, the court exercises its discretion to construe the debtor's amended response as his response to the trustee's objection. The court notes that its findings and conclusions would have been the same considering only the original response.

3 All subsequent statutory references are to the California Code of Civil Procedure.

4 Ms. Poquette contends the debtor has not claimed an interest in the real property in the first place. "In this particular case, the debtor has not listed the real property as exempt under the homestead exemption on Schedule C." Paula Poquette's Response, filed Jan. 12, 2016, at 2:6-7. The debtor utilized a form of Schedule C that listed all of the Schedule B property categories in the "Description of Property" column, and the debtor placed the exemption claim opposite the category: "17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled." On his Schedule B itself, the debtor had described his particular property listed opposite that category as "Property settlement: Residence at [Lynshar Road address]." The court finds that description, together with the debtor's listing of the homestead exemption statute as the law providing the exemption, to be sufficient to alert parties-in-interest that the actual property the debtor was claiming as exempt was the real property.

5 According to the trustee, the two pages are the portions of the document provided by the debtor.

6 See also § 704.710: "'Dwelling' means a place where a person resides . . . ." Subsection (a)(1).

"'Homestead' means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.
Subsection (c).

7 The appellate court correctly vacated the submission of the case. The debtor was the respondent in the dissolution proceeding, not the petitioner; thus, the automatic stay applies to the appeal. See Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817 F.2d 1424, 1426 (9th Cir. 1987) (stay applies to appeals where underlying proceeding was brought against debtor, even though debtor is appellant).

18.	14-25148-D-11 MF-34	HENRY TOSTA	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION 12-16-15 [556]

19.	15-29453-D-11	SILVERHAWK INC.	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-4-15 [1]

Final ruling:

This case was dismissed on February 25, 2016. As a result the status conference is concluded. No appearance is necessary.

20.	14-20064-D-7 WR-72	GLENN GREGO	MOTION FOR ORDER OF UNEARNED FEES 12-4-15 [570]

Final ruling:

This matter is removed from calendar because the motion has already been denied. For the reasons set forth in the final ruling posted in the court's pre-hearing dispositions for the original hearing date, January 27, 2016, the motion was denied by minute order dated January 28, 2016. The final ruling, which appears in the court's minutes for January 27, 2016, DN 606, stated that the debtor's amended notice, by which he purported to continue the hearing to this date, would be disregarded and the motion would not be calendared for this date, March 9.

21. 14-20064-D-7 GLENN GREGO
15-2042 WR-35
GREGO V. PACIFIC WESTERN BANK

CONTINUED MOTION FOR SUMMARY JUDGMENT
8-7-15 [82]

Final ruling:

Per a stipulation by the parties the hearing on this motion is continued to May 18, 2016 at 10:00 a.m. No appearance is necessary on March 9, 2016.

22. 14-27267-D-7 SARAD/USHA CHAND
RLG-6

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1-4
2-5-16 [231]

Final ruling:

This is the debtors' objection to the claim of the Internal Revenue Service ("IRS"), Claim No. 1, as amended on April 15, 2015. The United States has filed a Notice of Improper Service. For the following reasons, the objection will be overruled.

The debtors served the IRS at only one of the three addresses listed in the court's Roster of Governmental Agencies, whereas the IRS must be served at all three addresses. LBR 2002-1(c). In particular, the debtors failed to serve the IRS through the United States Attorney for this district and failed to serve the United States Department of Justice at the precise address set forth in the Roster.[1] After the United States filed its Notice of Improper Service, in which it pointed out that the debtors had failed to serve the United States Attorney for this district, the debtors filed a second set of moving papers, this time referring to their objection as an amended objection and including a hearing date of March 23, 2016. They served this new set of documents (which were in all respects identical to the original set except for the titles, hearing date, and signature dates), this time adding the correct designation of the Department of Justice but serving the United States Attorney for the Northern District of California, not the United States Attorney for this district. Thus, service of the second set of moving papers was also incorrect.

The court notes also that the proofs of service of the original and second sets of documents were insufficient for failure to state the manner of service. That is, they included only a list of the documents served and a list of names and addresses, but failed to state the manner in which service was made – that is, whether by placing true and correct copies in envelopes addressed as indicated, which were then deposited in the United States Mail with postage prepaid, or otherwise. In addition, service of the second set of documents provided only 28 days' notice of the March 23, 2016 hearing date rather than 30 days', as required by LBR 3007-1(b)(2).

Finally, the court's local rule provides that the party objecting to a claim may file a reply to any opposition (LBR 3007-1(b)(1)(B)); it does not provide that the party may respond to an opposition by filing an "amended" objection. In the event the debtors wish to object to the claim of the IRS, they must do so by filing a new objection, not an amended one, which must contain a new docket control number

and otherwise comply with applicable rules. The present "amended" objection will not be heard on March 23, 2016; instead, the objection as a single objection will be overruled for the reasons discussed above. The objection will be overruled by minute order. No appearance is necessary.

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1 As to the Department of Justice, the debtors utilized the correct post office box number, but served "Aaron Bailey, Trial Attorney, Tax Division" rather than "United States Department of Justice, Civil Trial Section, Western Region," as listed on the Roster.

23. 15-27967-D-7 WILLA RHODES
15-2234
RHODES V. U.S. BANK NATIONAL ASSOCIATION ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
1-27-16 [6]

Final ruling:

This is the motion of defendants U.S. Bank National Association and Specialized Loan Servicing, LLC (the "defendants") to dismiss this adversary proceeding. The motion will be denied without prejudice for a variety of procedural reasons.

First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice of hearing did not advise the plaintiff whether and when written opposition must be filed, and if so, of the deadline for filing and serving it and the parties who must be served, as required by LBR 9014-1(d)(4). Further, to the extent the moving party intended to require the filing of written opposition, the notice of hearing did not include the cautionary language required by the same rule.

Third, the proofs of service are attached to the documents themselves, rather than being filed separately, as required by LBR 9014-1(e)(3). Fourth, the proofs of service are not signed under oath, as required by 28 U.S.C. § 1746. Finally, the proofs of service do not clearly state the manner of service. The declarant checked the box indicating the documents were served "BY MAIL, as follows:" but did not check the following box describing the firm's practice of collection and processing of correspondence for mailing. The proofs of service do not purport to evidence that the envelopes containing the documents were deposited in the United States Mail with postage prepaid, or that they were otherwise served. The proofs of service do purport to evidence service by electronic access, referring to the "Federal Electronic Filing Court Order," with the declarant certifying that the documents were uploaded to the court's website and that "the webmaster will give e-mail notification to all parties." However, this is not an approved method of service under this court's local rules. See LBR 7005-1(d).

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

24. 16-20569-D-7 UST-1 — 5065 PASADENA TRUST — MOTION TO DISMISS CASE 2-2-16 [6]

Final ruling:

This case was dismissed on February 19, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

25. 15-27284-D-11 JKB-5 — CONSOLIDATED RELIANCE, INC. KUMLIN REVOCABLE TRUST DATED 1/19/99 LINTON MANAGEMENT, INC., ET AL. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 2-8-16 [271]

Final ruling:

This matter is resolved without oral argument. This is Kumlin Revocable Trust Dated January 19, 1999, et al.'s motion for relief from automatic stay. Debtor filed a statement of non-opposition and no other 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.

26. 14-31685-D-7 PGM-1 — CATHERINE PALPAL-LATOC — OBJECTION TO CLAIM OF DCFS USA, LLC., CLAIM NUMBER 7 1-21-16 [159]

Tentative ruling:

This is the debtor's objection to the claim of DCFS USA LLC ("DCFS"), Claim No. 7 on the court's claims register. DCFA has not filed opposition. However, for the following reasons, the objection will be overruled.

The basis for the objection is that DCFS's proof of claim was filed after the claims bar date in the case. As the trustee points out in his opposition, the late filing of a proof of claim is not a valid ground for disallowing this claim. The grounds for disallowing claims are listed in § 502(b) of the Bankruptcy Code. At first glance, it appears the late filing of a proof of claim is among those grounds. Pursuant to subsection (b)(9), a claim is subject to disallowance if proof of such claim is not timely filed. However, the exception applies here; namely, a late claim is subject to disallowance "except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) . . . ." Under § 726(a)(1), a creditor in a chapter 7 case who files his claim late but on or before the earlier of (1) the tenth day after the mailing of a summary of the trustee's final report or (2) the date on which the trustee commences final distribution is entitled to a distribution. As neither of those alternative dates has passed, DCFS is entitled to a distribution after timely filed claims have been paid in full, and its claim is not subject to disallowance simply because its proof of claim was filed late. The trustee indicates he expects to pay timely filed claims in full, and thus, to make a distribution to DCFS.

As the debtor has failed to state an appropriate ground for disallowance of the claim, the objection will be overruled.[1] The court will hear the matter.

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1 In reaching this conclusion, the court assumes without deciding that the debtor has standing to object to the claim.

27. 15-91087-D-11 SPYGLASS EQUITIES, INC. CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-10-15 [1]

28. 13-32489-D-7 HCS-6 DENNIS GALLAGHER AND JANE DUTRA GALLAGHER MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE & SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
2-10-16 [92]

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.

29. 15-29890-D-11 MMS-1 MISCHCON DE REYA NEW YORK, LLP VS. GRAIL SEMICONDUCTOR MOTION FOR RELIEF FROM AUTOMATIC STAY
2-10-16 [102]

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

Tentative ruling:

This is the motion of Mishcon De Reya New York LLP ("Mishcon") for relief from the automatic stay to permit it to proceed with pending state court litigation against Mitsubishi Electric & Electronics USA, Inc. ("Mitsubishi"). The debtor has opposed the motion and the Official Committee of Unsecured Creditors has filed a joinder in the debtor's opposition. Mishcon has filed a reply. For the following reasons, the court will deny the motion as moot or unnecessary.

In the state court action, which was an action brought by the debtor against Mitsubishi, Mishcon alleges Mitsubishi violated its rights under Cal. Code Civ. Proc. § 708.440(a) by settling with the debtor without notice to or consent of Mishcon, who had filed a notice of lien in the action. Before this bankruptcy case was filed, Mishcon filed a motion in the state court action seeking to vacate the order dismissing the action and for judgment against Mitsubishi under Cal. Code Civ. Proc. § 708.470(c) for the value of Mishcon's alleged lien. The debtor contends prosecution of that motion would violate the automatic stay imposed when the debtor's bankruptcy case was commenced.

The debtor contends the state court motion seeks a determination of the validity of a lien against the debtor's property; namely, the proceeds the debtor received from Mitsubishi in settlement of the state court action. The court disagrees. By the state court motion, Mishcon is pursuing a direct independent claim against Mitsubishi based on Mitsubishi's alleged violation of Mishcon's lien rights; Mishcon is seeking no relief against the debtor or property of the estate. In fact, there is not a hint in Mishcon's motion in the state court action that Mishcon is seeking any recourse against the debtor or that the granting of the motion would have any effect on property of the estate. The motion against Mitsubishi would determine whether Mitsubishi violated Mishcon's lien rights in the settlement proceeds solely for the purpose of imposing liability against Mitsubishi, and not for the purpose of enforcing a lien against the settlement proceeds, if any, remaining in the bankruptcy estate.

The debtor hangs its hat on a single case, Morantz v. Collette (In re Collette), No. CC-08-1266 (9th Cir. BAP Dec. 22, 2009). In that case, a judgment creditor of the debtor – the party in the position of Mishcon in this case – filed a notice of lien in a state court action brought by the debtor (in the position of the debtor here) against an attorney who had previously represented the debtor (in the position of Mitsubishi). Notwithstanding the notice of lien, the debtor and the attorney settled their dispute without notice to the judgment creditor and, by the time the debtor filed bankruptcy, the attorney had paid some but not all of the settlement proceeds to or, apparently, at the direction of the debtor, leaving a portion still due and owing. The judgment creditor then filed a motion in the state court action to enforce its lien rights against the remaining balance due the debtor from the attorney. The BAP held that the filing of the motion violated the automatic stay.

> **Here, Morantz sought to enforce his Lien against Debtor's right to payment under the Torjeson Settlement. Under the plain language of the lien statutes . . ., any lien that Morantz held was a lien against Debtor's property. That the Lien Enforcement Motion and Order were directed at Torjeson (rather than Debtor) does not change the fact that Morantz' Lien applied, if at all, against the Settlement Funds - property in which Debtor held an interest - and not property of Torjeson's. (Indeed, the Lien Enforcement Motion deals with Torjeson's obligation, not with his property.)**

Collette, No. CC-08-1266, at 16:12-22 (emphasis added).

The Collette case is not on point here because in that case, Morantz' lien enforcement motion was an action to enforce a lien on the debtor's right to payment from Torjeson, whereas here, Mitsubishi paid the full amount of the settlement proceeds to the debtor pre-petition. No right to payment remains in the debtor's estate. To the extent, if any, some portion of the settlement proceeds remained with the debtor when this case was filed, prosecution of Mishcon's state court motion will not affect those proceeds because Mishcon is not seeking to enforce its lien rights against the proceeds. It is seeking only a money judgment against Mitsubishi under § 708.470(c). In the event Mitsubishi pays some amount to Mishcon, either in settlement or on a judgment, and later asserts a subrogation claim against the debtor, the debtor will need to deal with the claim at that time. The debtor's concern – that "the Debtor could be precluded from having this Court determine whether Mishcon's lien is invalid because the state court already had adjudicated

that issue" (Debtor's Opp. at 5:2-4) – appears unfounded because neither the debtor nor the estate is a party to Mishcon's motion in the state court action, and thus, the outcome would have no preclusive effect on them.

For the reasons stated, the motion will be denied as moot or unnecessary. The court will hear the matter.

30. 13-21199-D-7 JAMES SCOTT — MOTION TO COMPEL ABANDONMENT
DL-1 — 2-10-16 [343]

Final ruling:

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

31. 15-29718-D-7 LEILA MONDARES — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 2-18-16 [11]
PHH MORTGAGE CORPORATION VS.

32. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO APPOINT THE HONORABLE RALPH R. MABEY AS MEDIATOR AND/OR MOTION TO PAY
FWP-30 — 2-16-16 [813]

33.	16-20748-D-7 DBJ-1	JAMES PEEPLES	MOTION TO EXTEND AUTOMATIC STAY 2-18-16 [9]
34.	15-29649-D-7 NF-2	ADAM/GLORIA LOPEZ	CONTINUED MOTION TO REDEEM 1-26-16 [18]
35.	16-20760-D-11	ADA CONSTRUCTION SERVICES, INC.	STATUS CONFERENCE RE: VOLUNTARY PETITION 2-11-16 [1]
36.	15-27284-D-11 SSA-2	CONSOLIDATED RELIANCE, INC.	MOTION FOR APPROVAL OF STIPULATION 2-22-16 [287]

37. 15-29890-D-11 FWP-7 — GRAIL SEMICONDUCTOR — CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS 2-3-16 [87]

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

38. 15-29767-D-7 SKS-1 — JUSTIN WHITE — TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 1-28-16 [15]