UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 30, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	14-22401-D-7	GILBERTO/CARMEN MIRANDA	AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 3-27-14 [22]
2.	11-43803-D-12 JPJ-1	TERESA GROESBECK	CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 1-31-14 [54]

3. 12-26017-D-7 SSA-2 — EDUARDO/IRMA MARTIR — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOSE A. FRANCO 4-1-14 [41]

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.

4. 12-26017-D-7 SSA-3 — EDUARDO/IRMA MARTIR — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SALVADOR FRANCO 4-1-14 [47]

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.

5. 12-26017-D-7 SSA-4 — EDUARDO/IRMA MARTIR — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALBERTO FRANCO 4-1-14 [53]

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. 12-26017-D-7 SSA-5 — EDUARDO/IRMA MARTIR — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ABEL MARTIR 4-1-14 [59]

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.

7. 14-22724-D-7 MLG-1 — PATRICIA DEXTER — MOTION FOR RELIEF FROM AUTOMATIC STAY 3-26-14 [27]
RICHARD BURTON VS.

Final ruling:

This is Richard Burton's (the "Movant") motion for relief from stay. The Movant asserts, and the record supports findings that he obtained a judgment for unlawful detainer and possession of the real property that is the subject of this motion pre-petition. As a result of this pre-petition judgment the debtor has only have a possessory interest in the property. Accordingly, the court finds that cause exists for relief from stay under Bankruptcy Code § 362(d)(1). As a result, relief from stay will be granted under Code § 362(d)(1) and FRBP 4001(a)(3) will be waived by minute order. No appearance is necessary.

8. 13-29030-D-7 — WILLIAM/JANET CHENG — MOTION TO VACATE 3-19-14 MINUTE ORDER FOR STAY PENDING TRUSTEE RICHARDS TURNING OVER THE CRUCIAL EVIDENCE TO CHENGS 3-21-14 [308]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

9. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO VACATE 3-19-14 MINUTE ORDER ERRONEOUSLY APPROVING THE UNAUTHORIZED AND ILLEGAL SETTLEMENT WITH FASIC RE THE LINDA RIO DR. PROPERTY
3-24-14 [311]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

10. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO DISMISS CASE
3-26-14 [314]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

11. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO OPPOSE TRUSTEE RICHARDS NOTICE OF APPLICATION FOR ORDER AUTHORIZING EMPLOYMENT OF NEW ATTORNEY OF HERUM, CRABTREE
2-18-14 [242]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

12. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO OPPOSE TRUSTEE RICHARDS PROPOSED ORDER AND HIS APPLICATION FOR AUTHORITY TO EMPLOY HIS ACCOUNTANT AND CHENGS
2-24-14 [263]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

13. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO VACATE 1-8-14 ORDER EMPLOYING TURTON REAL ESTATE AS TRUSTEE RICHARDS' BROKER
2-26-14 [265]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

14. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO VACATE 2-20-14 MINUTE ORDER DENYING CHENGS MOTION SETTING ASIDE THE 12-13-13 ORDER RE BRENNING OJBECTION
2-28-14 [269]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

15. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO VACATE 2-20-14 MINUTE ORDER DENYING CHENGS MOTION SETTING ASIDE THE 12-19-13 ORDER COMPELLING CHENGS TO AMEND SCHEDULES, ETC.
2-28-14 [271]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

16. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO VACATE THE 2-20-14 MINUTE ORDER DENYING CHENGS MOTION SETTING ASIDE THE 12-13-14 ORDER SHUTTING DOWN BUSINESS
2-28-14 [273]

Final ruling:

This motion will be denied because the moving parties failed to include a docket control number on the motion and other documents filed with the motion, as required by LBR 9014-1(c). This ruling may appear harsh at first glance. However, the court has previously cautioned the debtors about their failure to include a docket control number on earlier motions (see rulings at DNs 65 and 208), and their continuing failure to include a docket control number has created considerable disarray in the docket. The court again cautions the debtors to familiarize themselves with the court's local rules, and in regard to this particular ruling, with LBR 9014-1(c) regarding the use and manner of formatting docket control numbers. If the debtors fail to comply with the Local Bankruptcy Rules in the future, their motion(s) will be summarily denied as procedurally defective.

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

17. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR TURTON COMMERCIAL REAL ESTATE, REALTOR(S)
HCS-4 — 4-2-14 [320]

Tentative ruling:

This is the trustee's motion to sell the real property at 623 16th Street, Sacramento, California. The debtors have filed opposition; no other parties-in-interest have opposed the motion. For the following reasons, the motion will be granted, and the court will entertain overbids, if any, at the hearing. The trustee will take the debtors' objections in order.[1]

• The debtors complain the trustee did not serve the motion in a white first-class envelope, did not give 28 days' notice of the hearing, and the debtors did not receive the motion until April 14, leaving them insufficient time to prepare their opposition. Thus, the debtors request that the hearing be continued. The request is denied. The trustee's proof of service evidences service on the debtors (and creditors) on April 2, 2014, 28 days prior to the hearing date, which complies with the applicable local rule. Further, the court concludes from the length and thoroughness of the opposition that the debtors had plenty of time to prepare it.

• The debtors complain the moving papers are unreadable because the print is small, some exhibits are missing, and some lines are deleted and some crossed with unreadable lines. This objection borders on the spurious, as it is clear the debtors have sufficiently understood the moving papers to enable them to present multiple objections.

• The debtors contend the purchase and sale agreement (the "agreement") between the trustee and the proposed purchaser is fraudulent, and that the trustee wrongfully entered into it. Specifically, the debtors claim the trustee fraudulently signed the agreement as the seller when he is not the seller. Later in the opposition, they elaborate on this theme as follows: "Trustee Richards is not the seller. Trustee Richards invalided [sic] himself of all claims that he is chapter 7 bankruptcy trustee."[2] This conclusion follows claims that (1) the trustee "concealed the facts that He dismissed [the debtors'] chapter 7 bankruptcy twice" (Opp. at ¶ 24); and (2) the issue of the dismissal of the case is pending in the United States Court of Appeals. The court has on several prior occasions addressed the debtors' claim that the trustee dismissed this case at the initial session of the meeting of creditors and/or later, through the credit reporting agency Equifax. As the court has explained, the trustee has never purported to dismiss the case, and even if he had, he would have had no authority to do so.

It is true that this court's order denying the debtors' motion to dismiss this case is on appeal to the Ninth Circuit Court of Appeals. The pendency of the appeal, however, does not vitiate the trustee's authority to sell the property or the court's authority to approve the sale.

> **The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction over those aspects of the case involved in the appeal. The bankruptcy court retains jurisdiction over all other matters that it must undertake to implement or enforce the judgment or order, although it may**

not alter or expand upon the judgment. If a party wants to stay all of the proceedings in bankruptcy court while an appeal is pending, it must file a motion for a stay.

Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007) (citations omitted) (internal quotation marks omitted). Thus, for example, where an appellant fails to obtain a stay pending its appeal of an order denying its motion to dismiss a chapter 7 case, "the bankruptcy court retain[s] jurisdiction to enter the discharge order; the only matter over which it lack[s] jurisdiction [is] the motion to dismiss – the very order being appealed." Id. Similarly, an appeal from an order confirming a chapter 11 plan does not divest the bankruptcy court of jurisdiction to implement the plan. In re Yellowstone Mt. Club, LLC, 2010 Bankr. LEXIS 977, *8 (Bankr. D. Idaho 2010). Thus, the pendency of an appeal concerning the denial of the debtors' motion to dismiss this case does not divest this court of jurisdiction to approve the sale.

The debtors also make reference to a motion for a stay pending appeal. The Bankruptcy Appellate Panel denied their request for a stay pending appeal by order filed March 11, 2014, and the debtors have not filed a motion for a stay in the Court of Appeals.[3] In short, the debtors' appeal provides no basis for this court to defer ruling on the trustee's sale motion.

• Next, the debtors quote this language in the agreement: "Buyer is in a multiple Counter Offer scenario and Buyer maintains the right to accept an Offer at their discretion." Trustee's Ex. C, ¶ 34(i). The debtors then suggest there has been collusion between the buyer and the trustee or other bidders "or an attempt to take grossly unfair advantage of other bidder[s]" (Opp. at ¶ 14), and that the debtors have been damaged financially by collusion among the trustee, the buyer, and the trustee's broker. Further, they claim the trustee "schemed with his broker . . . and his buyer . . . to buy low and immediately resell high to get [the debtors'] motel." Opp. at ¶ 60. On the contrary, the debtors have presented no evidence of any collusion. The trustee has presented evidence that the property was extensively marketed. The trustee's broker received expressions of interest from approximately 120 parties, and the trustee ultimately received eight offers to purchase the property.

In addition, the trustee testifies the negotiations with the proposed buyer were conducted at arm's length, and the trustee has no relationship with the buyer. He also testifies the proposed purchase price is consistent with the broker's estimate of value before the property was listed for sale. Finally, the fact that the buyer has made a $200,000 nonrefundable deposit, has agreed to purchase the property with no contingencies, and has agreed to be responsible for removing the debtors from the property after the sale closes is strong evidence of the buyer's good faith in purchasing the property. The meaning of the above-quoted language about the multiple counter-offer scenario is not clear; however, absent any other evidence, the court has no reason to believe there has been any collusion here.

• The debtors contend the $1,125,000 purchase price is fraudulent. They cite a "Property Detail" apparently printed from MetroList Services, Inc. purporting to show a purchase price of $2,475,000 in April of 2012 for a property at 818 15th Street, Sacramento, which the debtors claim is a 16-unit motel "situated between a very noisy 5 stories parking garage and a very noisy auto body and repair shop" that sold during what the debtors claim was "a recession property down turn market." Opp. at ¶ 19. The debtors then describe their property as a 42-unit motel with a restaurant and two owner's units, and conclude its value is $5.8 million; hence,

apparently, their conclusion that the trustee's proposed sales price, $1,125,000, is fraudulent.

The Property Detail is hearsay and inadmissible. Even if it were admissible, the debtors have shown no qualifications to derive an opinion about the value of their property from a single allegedly comparable sale (or from many). Finally, the value of a property is generally best determined as the price a willing and able buyer will pay a willing and able seller. In this case, the property has been extensively exposed to the market, with the trustee receiving many expressions of interest and multiple offers. The court has no reason to doubt that the purchase price reflects the property's fair market value.

• The debtors contend valid creditors would not be affected by dismissal of the case. "Chengs are honoring the claims of the valid creditors." Opp. at ¶ 37. However, dismissal of the case is not at issue here, and based on the debtors' allegations of phony and duplicate claims, their contention that the loan secured by the deed of trust against the property was paid off years ago, and their contention that they had no code enforcement liens and no county claims, the court has no reason to believe that if the debtors sought dismissal of the case again, they could establish that creditors would be well-served by dismissal.[4]

• The debtors attempt to distinguish between the motel on the property and the owner's unit in the motel they claim has been "[their] residence for more than 25 years" (Opp. at ¶ 55). They then assign a value of $490,000 to that unit, claiming the motel itself is worth $5.8 million.[5] In the debtors' view, the trustee cannot sell the motel itself because their owner's unit is the only property they listed on their bankruptcy schedules. "Janet Cheng declares under the penalty of perjury that Janet Cheng did not list Chengs['] 5.8 millions motel of the bankruptcy schedule." Opp. at ¶ 61. Thus, "Chengs respectfully request the court to stop Trustee, his broker, their buyer wrongfully and illegally take Chengs['] $5.8 millims [sic] motel that is not of Chengs['] bankruptcy schedule." Id. at ¶ 65.

This theory would abrogate the fundamental principle that all property of the debtors as of the commencement of the case became property of the bankruptcy estate in this case, pursuant to § 541(a)(1) of the Bankruptcy Code, whether or not listed by the debtors on their schedules.

• The debtors challenge the court's order authorizing the trustee to employ a broker as void because the court granted the trustee's motion to employ him without a hearing. That order is not at issue here; however, the court notes that the debtors earlier filed a motion to vacate the order authorizing the employment, in which they argued their rights were violated because they were denied the right to a hearing. The motion to vacate the order was denied.

• The debtors claim the trustee's contract with his broker is void because the trustee signed it before the court entered an order approving the employment. There is no requirement that a contract not be signed until after the court has approved it.

• Finally, the Chengs request a stay pending appeal to the Court of Appeals. They made this request in their original opposition, and on April 21, 2014, filed a supplemental opposition in which they clarify they want (1) a stay pending appeal to the Court of Appeals, (2) a stay pending their agreement with the trustee for a new mortgage, "to honor valid creditors" (Supp. Opp. at 1:23-24), and (3) a stay pending the Court of Appeals' dismissal of their chapter 7 case. It is not clear whether

the debtors are proposing to appeal from the order on the trustee's sale motion and seek a stay pending that appeal or whether they seek a stay pending their present appeal from the order denying their motion to dismiss the case. In either event, the debtors have failed to demonstrate either (1) that they are likely to succeed on the merits of either appeal, and that there is a possibility of irreparable injury to them if either order is not stayed; or (2) that there are serious questions going to the merits and that a balance of hardships tips sharply in their favor, as required for issuance of a stay pending appeal. See Cadance Design Sys. v. Avant! Corp., 125 F.3d 824, 826 (9th Cir. 1997). As to the suggestion that the debtors have reached an agreement with the trustee to allow them to obtain a new mortgage on the property to pay their "valid creditors," there is no evidence of such an agreement.

For the reasons stated, the debtors' objections to the motion are without merit, and the motion will be granted. The court will entertain overbidding at the hearing.

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1 The debtors have numbered their objections, for a total of 79. The court has fewer responses, because many of the debtors' objections are duplicative.

2 Debtors' Objection and Opposition, filed April 15, 2014 ("Opp."), at ¶ 30.

3 The debtors also refer to their alleged discovery, on April 14, that the district court had inadvertently not forwarded the debtors' designation of the record to the Bankruptcy Appellate Panel; they claim that resulted in the Panel's dismissal of their appeal. Whether that occurred or not, it has no bearing on this court's consideration of the present motion.

4 The debtors' opposition also includes multiple allegations challenging the claims of the judgment lienholders who will be paid from the sale proceeds. Although the opposition is signed by debtor Janet Cheng under penalty of perjury, the allegations are far too conclusory to be of any evidentiary value.

5 The debtors also contend they have claimed an exemption of $450,000 in the owner's unit. However, the court has earlier sustained a creditor's objection to the claim of exemptions, and no amended claim of exemptions has been filed.

18.	13-30632-D-7 JRR-3	CAINE/DANA OTT	MOTION FOR COMPENSATION FOR JOHN R. ROBERTS, TRUSTEE'S ATTORNEY 3-12-14 [32]

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.

19. 14-22832-D-11 DAVID/DENEILLE LIND — PRELIMINARY STATUS CONFERENCE RE: VOLUNTARY PETITION 3-20-14 [1]

Final ruling:

This case was dismissed on April 15, 2014. As a result the status conference will be concluded. No appearance is necessary.

20. 12-42143-D-7 WILLIAM MCCARTY — MOTION FOR RELIEF FROM AUTOMATIC STAY 3-5-14 [45]
PD-1
WELLS FARGO BANK, N.A. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on April 11, 2013 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.

21. 14-21547-B-13 JENNINE QUIRING — CONTINUED MOTION TO EXTEND AUTOMATIC STAY 3-7-14 [18]
RJM-2

Final ruling:

This case has been transferred to Deptment B of this court. This matter will be dropped from calendar. No appearance is necessary.

22. 14-22149-D-7 TERRYLYN MCCAIN — MOTION TO WAIVE FILING FEE 4-1-14 [44]

23. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2313 CDH-2 4-2-14 [69]
BURKART V. KUMAR

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

Tentative ruling:

This is the motion of the plaintiff, who is the trustee in the chapter 7 case in which this adversary proceeding is pending (the "trustee"), to compel the defendants in this and 29 other adversary proceedings to produce their federal tax returns for 2008, 2009, 2010, and 2011, and any amendments thereto. The defendants in all 30 adversary proceedings have filed a single opposition. For the following reasons, the motion will be granted, and the defendants will be required to produce the tax returns and amendments, subject to a requirement that they not be further disseminated.

The Meet and Confer Requirement

On November 27, 2013, the trustee served a request for production of, among other things, the tax returns. On January 14, 2013, the defendants served an objection on the grounds the request was "overly broad, vague and ambiguous," and also that "the secrecy of a tax return is protected by ample state and federal law, and will not be disclosed absent a court order." Trustee's Ex. A, pp. 11-12. The trustee filed this motion on April 2, 2014.

The defendants cite this court's opinion in In re Sanchez, 2008 WL 4155115, 2008 Bankr. LEXIS 4239, *2-5 (Bankr. E.D.Cal. 2008), and Shuffle Master v. Progressive Games, 170 F.R.D. 166, 172 (D. Nev. 1996), and claim the trustee failed to sufficiently meet and confer with them before filing the motion. They contend "the Trustee's counsel has never requested an in-person meeting or telephone conference with defense counsel over the issue of the Defendants' tax returns." Defendants' Opposition, filed April 16, 2014 ("Opp."), at 2:28-3:1. The defendants also claim that "[h]ad [the trustee's] counsel contacted defense counsel as required or provided her with meaningful support for his position, the parties may have been able to defer or even avoid the Motion . . . ." Id. at 4:10-12.

The first quoted statement – that the trustee's counsel never requested an in-person meeting or telephone conference, a statement also made by Ms. Hansen in her declaration, is misleading. Although the correspondence between the parties' counsel does not include a verbatim request for an "in-person meeting or telephone conference," the trustee's counsel, Mr. Hughes, as early as January 14, 2014, asked the defendants' counsel, Mr. Rutledge, to schedule a time to meet and confer. Mr. Rutledge responded the same day that he "[would] be in touch soon with a meet and confer time frame." Trustee's Ex. E, filed April 2, 2014, p. 5. Two weeks later, Mr. Rutledge wrote that he would be in touch the following week. Mr. Hughes responded the same day, asking for a date and time when Mr. Rutledge would be available. Two days later, Mr. Hughes left a message for Mr. Rutledge, noting that he had not provided a date and time. In other words, contrary to the defendants' claim, Mr. Hughes did request that defense counsel schedule a time to meet and confer; further, Mr. Hughes is the one who followed up when defense counsel did not suggest a date and time. It is simply misleading for the defendants to now state that Mr. Hughes "never requested an in-person meeting or telephone conference with defense counsel."

Further, Mr. Hughes and the defendants' counsel, Ms. Hansen, did have a telephone conference concerning the tax returns – on February 5. The defendants claim Mr. Hughes "simply asserted that he wanted the Defendants' tax returns." Opp. at 3:3. Mr. Hughes' e-mail immediately following that conversation, however, confirms they also discussed whether or not tax returns are privileged, and in his follow-up e-mail, Mr. Hughes provided Ms. Hansen with case authority for that proposition. On February 13, Ms. Hansen wrote saying she had had an opportunity to review the authorities Mr. Hughes had provided, but asking why Mr. Hughes needed the tax returns and why he believed they are relevant. Mr. Hughes provided his reasons in an e-mail on February 18, and on February 26, Ms. Hansen replied, as her "further effort to meet and confer" (Trustee's Ex. C, p. 1), with case law of her own, concluding that the trustee does not have a compelling need for the returns because the information sought is readily available elsewhere. She added that the defendants were not willing to produce the returns. She invited Mr. Hughes to provide additional authority if he had any, but did not suggest a follow-up meet and confer conference. Mr. Hughes replied on March 26 outlining in some detail the trustee's efforts to obtain information about the payments the defendants received from the debtor from sources other than the defendants' tax returns, including issuing subpoenas to banks and pursuing the production of unredacted copies of documents previously produced in redacted form. Mr. Hughes stated he would file a motion to compel absent a response by March 31. On March 31, Ms. Hansen responded that she was still reviewing the March 26 letter, needed more time, and would be responding by April 7. When Mr. Hughes objected to the delay, Ms. Hansen responded with a recitation of her other work obligations, as well as the days she works a reduced schedule or is out of the office, again stating she would respond by April 7.

The court concludes from this recitation that Mr. Hughes sufficiently attempted to meet and confer, and did meet and confer with the defendants' counsel, in an effort to obtain the tax returns. Given the aggressive tone of the defendants' opposition to the motion, the court has no reason to believe any further attempts to meet and confer would have been productive.[1]

Waiver of Objection

The trustee contends the defendants have waived any objection to production of the tax returns by their failure to interpose a timely objection. The defendants respond that the delay was only one day (a point the trustee contests) and contend that, as it was caused by their counsel's error, it should not be held against them. The court will grant the trustee's motion on other grounds, and thus, need not decide the issue.

Relevance and Compelling Need

"Tax returns do not enjoy an absolute privilege from discovery." Premium Service Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir. 1975). However, there is "a public policy against unnecessary public disclosure . . . ." Id. Thus,

> [c]ourts generally apply a two-pronged test to assure a balance between the liberal scope of discovery and the policy favoring the confidentiality of tax returns. First, the court must find that the returns are relevant to the subject matter of the action. Second, the court must find that there is a compelling need for the returns because the information contained therein is not otherwise readily obtainable.

> The party seeking production has the burden of showing relevancy, and once that burden is met, the burden shifts to the party opposing production to show that other sources exist from which the information is readily obtainable.

A. Farber & Ptnrs., Inc. v. Garber, 234 F.R.D. 186, 191 (C.D. Cal. 2006) (citations omitted) (internal quotation marks omitted). The parties do not dispute that these are the relevant standards and burdens of proof, only their application in this case.

The court agrees with the defendants that the trustee's first two reasons for seeking the tax returns are insufficient. The returns themselves will not demonstrate whether the debtor helped the defendants prepare the returns or whether he informed some of the defendants they did not need to list on their returns payments they received from him or his business entities. The trustee's next two points, however, are correct. The returns may show information about the defendants' investments with the debtor and payments they received from him or his business entities. Similarly, the returns may show interest payments the defendants received.

The defendants' response is merely a matter of semantics. The trustee states that "[t]he tax returns should reflect information about investments with [the debtor] or payments received in furtherance of the Ponzi scheme." Plaintiff's Motion, filed April 2, 2014 ("Mot."), at 8:27-28. The defendants construe the word "should" to mean that if the returns do not include that information, that is "an issue for the IRS, or a criminal prosecutor, not Plaintiff." Opp. at 8:7-8. Thus, in their view, the returns are not relevant here. It is clear from the motion, however, that the term "should" means the returns "are likely to" or "may" show payments received. In reaching its decision on this motion, the court need not and does not reach the question whether the returns should disclose the payments, as a matter of tax, criminal, or any other law. The court finds only that the returns may reveal payments received by the defendants from the debtor or his business entities, and the returns are likely to be relevant in these proceedings for that reason.

Concerning the interest payments, the defendants also contend those would relate only to the trustee's claim of usury, which, they claim, "is based on a hypothetical and, therefore, fails to state facts sufficient to constitute a cause of action." Opp. at 8:16-17. This might be an argument for a motion to dismiss a complaint under Fed. R. Civ. P. 12(b)(6); it is far from sufficiently developed to defeat this motion to compel production.

As a fifth ground, the trustee contends the tax returns are relevant because if payments received from the debtor are not disclosed in the returns, that absence would be relevant to the defendants' good faith defense to the trustee's fraudulent transfer causes of action. The trustee cites Kipperman v. Quiroz (In re Commercial Money Ctr., Inc.), 2006 Bankr. LEXIS 4708 (Bankr. S.D. Cal. 2006), as requiring disclosure of tax returns the court found were "highly relevant to the defendant's good faith defense and as impeachment evidence." Mot. at 8:13-14, quoting from Kipperman, 2006 Bankr. LEXIS 4708, at *4. The defendants claim the "highly relevant" language in the opinion was from the trustee's argument, and was not a part of the court's findings. This court has examined the quoted language in Kipperman: it is unclear whether the court was merely citing the trustee's argument or making that finding itself. Elsewhere in the opinion, however, the court noted that it had "addressed the relevancy of the tax returns at the hearing on this

matter and found them relevant to defendant's good faith defense and for impeachment purposes." 2006 Bankr. LEXIS 4708, at *13 n.5. In any event, this court has already determined that the tax returns would be relevant for determining the amounts of the payments, including interest payments, the defendants received. Thus, the court need not determine whether the returns would also be relevant to the good faith defense or for impeachment.

Finally, the court finds that the trustee has a compelling need for the tax returns because he has been unable to obtain the relevant information from other sources. The defendants ask, "If Plaintiff wants to know if any information relating to [the debtor] is in the Defendants' tax returns, why not just ask them?" Opp. at 2:8-10. The court is not persuaded this would be an effective way of obtaining the information. In support of an earlier motion in these same adversary proceedings, the trustee produced evidence that some of the defendants had failed to provide complete and straightforward responses to discovery requests. The trustee cited responses to interrogatories in which one or another defendant stated he or she did not recall the dates and amounts of the payments he or she received, or that he or she did not receive any payments, or that he or she believed he or she had received some payments but could not identify them, or that the total amount he or she received was unknown at the time of responding. The trustee also cited instances of defendants failing to produce documents that would identify the specific payments they received.

As late as seven months after the court made these observations about the defendants' discovery responses, the trustee still had not received unredacted copies of documents responsive to his requests for production. Thus, when he requested production of the tax returns, he also formally requested production of unredacted copies of all documents previously produced in redacted form. Although the trustee finally received unredacted copies, the defendants took over a year from the time the documents were first requested before finally producing them without redactions.

To make matters worse, the trustee's evidence indicates he still has not received complete responses from all the defendants as to what payments they received. Even now, years after he first began attempting to determine the dates and amounts of the payments, he still has nothing more from some defendants than statements that they do not remember what payments they received, were still reviewing their bank records, or had not received any payments at all, not even those the trustee has otherwise identified. The defendants who have so responded have not supplemented their discovery responses.[2] The defendants' response to the request for production that is the subject of this motion indicates they believe their responsibility in responding is limited to what they personally remember: "All of the answers and responses contained herein are based only upon such information and documents as are presently available and specifically known to this responding party. These answers and responses disclose only those contentions <u>which presently occur to</u> such responding party." Trustee's Ex. A, p. 10, lines 6-9 (emphasis added). Further, "the following interrogatory answers are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts which this responding party <u>may later recall</u>." <u>Id.</u> at lines 13-15 (emphasis added). Viewed in light of these facts, the defendants' complaint that the trustee "has not noticed a single deposition or served a single interrogatory specifically requesting any information about the contents of the Defendants' tax returns" (Opp. at 9:21-23) is ironic, at best.

Considering all of these circumstances, the court finds the defendants have not

met their burden of demonstrating that the information the trustee seeks is readily available from sources other than the tax returns. The court finds it is unlikely the trustee would obtain prompt, accurate, complete, and unqualified responses to questions, either by way of interrogatory or deposition, about what payments from the debtor are disclosed in the defendants' tax returns. Nor is there anything precluding discovery from more than one source or preventing a party from cross-checking pieces of evidence he has already gathered with evidence from other sources. This would be especially appropriate where, as here, information already received has apparently been incomplete, incorrect, or qualified. Thus, the court concludes that the trustee has a compelling need for the tax returns, and will order them produced.

The defendants have requested that, if the motion is granted, they be granted a protective order "permitting them to redact all portions of the returns that are unrelated to payments made or received by [the debtor]." Opp. at 10:22-23. Given that at least some of the defendants have had trouble recalling what payments they received, and given that other documents were produced by the defendants in unredacted form after first having been produced with redactions, this request will be denied. However, the order on this motion will provide that the trustee may not, absent further court order, disseminate the tax returns or information in them he did not already have or does not obtain in the future from other sources to anyone other than his attorneys and their employees, who shall likewise keep the returns and information confidential. The court will defer the issue of awarding attorney's fees to the trustee until the time of trial.

The court will hear the matter.

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1 In her opposition, the defendants' counsel has taken the liberty of quoting verbatim a recent ruling by the court in the parent case, but without quotation marks and without attribution (see Opp., p. 1, n.2), which is inappropriate. Counsel has also construed the court's admonition as applying solely to the trustee's counsel, when it was plainly addressed to both parties' counsel. Accusations that the trustee "flouted" the rules (Opp. at 1:14, 1:16, 4:3) and "flagrantly disregarded" the rules (4:19), and the statement that the trustee's counsel never intended to resolve the issue, but sought only "to paper the file under the pretext that a meet and confer had actually occurred" (4:15-16) are the sort of unhelpful hyperbole the court was referring to in its earlier admonition.

2 In at least one instance, documentation obtained through a bank subpoena demonstrated that the defendant's recollection was quite faulty. In that case, the defendant testified under oath, in support of his own motion for summary judgment, that he received only two payments, of $5,450 and $5,000, and that he had reviewed all of his bank statements, whereas his bank statements later revealed and the defendant later admitted he had received payments totaling $220,384. This evidence underscores the trustee's need to be able to look to other sources to confirm the defendants' recollections.

24. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2315 CDH-2 4-2-14 [68]
BURKART V. LAL
This matter will not be called before 10:45 a.m.

See ruling for Item No. 23.

25. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2319 CDH-2 4-2-14 [32]
BURKART V. SHARMA

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

See ruling for Item No. 23.

26. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2321 CDH-2 4-2-14 [39]
BURKART V. ATHWAL

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

See ruling for Item No. 23.

27. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2356 CDH-2 4-2-14 [67]
BURKART V. MAHABIR

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

See ruling for Item No. 23.

28. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2357 CDH-2 4-2-14 [67]
BURKART V. LAL

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

See ruling for Item No. 23.

29. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2361 CDH-2 4-2-14 [64]
BURKART V. NARAYAN

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

See ruling for Item No. 23.

30. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2366 CDH-2 4-2-14 [64]
BURKART V. PRASAD ET AL

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

See ruling for Item No. 23.

31. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2367 CDH-2 4-2-14 [65]
BURKART V. PRASAD

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

See ruling for Item No. 23.

32. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2369 CDH-2 4-2-14 [67]
BURKART V. SINGH

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

See ruling for Item No. 23.

33. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2372 CDH-2 4-2-14 [62]
BURKART V. ZHOU

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

See ruling for Item No. 23.

34. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2380 CDH-2 4-2-14 [68]
BURKART V. DASS

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

See ruling for Item No. 23.

35. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2386 CDH-2 4-2-14 [67]
BURKART V. RAM

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

See ruling for Item No. 23.

36. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2394 CDH-2 4-2-14 [66]
BURKART V. PRAKASH ET AL

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

See ruling for Item No. 23.

37. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2395 CDH-2 4-2-14 [68]
BURKART V. PRASAD ET AL

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

See ruling for Item No. 23.

38. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2397 CDH-2 4-2-14 [66]
BURKART V. RAMAN

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

See ruling for Item No. 23.

39. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2398 CDH-2 4-2-14 [27]
BURKART V. RAJ ET AL

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

See ruling for Item No. 23.

40. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2410 CDH-2 4-2-14 [65]
BURKART V. NARESH

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

See ruling for Item No. 23.

41. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2411 CDH-2 4-2-14 [68]
BURKART V. DILBECK

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

See ruling for Item No. 23.

42. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2415 CDH-2 4-2-14 [64]
BURKART V. NAIDU

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

See ruling for Item No. 23.

43. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2428 CDH-2 4-2-14 [65]
BURKART V. SINGH

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

See ruling for Item No. 23.

44. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2433 CDH-2 4-2-14 [65]
BURKART V. SINGH

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

See ruling for Item No. 23.

45. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2437 CDH-2 4-2-14 [65]
BURKART V. SINGH

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

See ruling for Item No. 23.

46. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2440 CDH-2 4-2-14 [67]
BURKART V. LAL

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

See ruling for Item No. 23.

47. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2441 CDH-2 4-2-14 [65]
BURKART V. LAL

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

See ruling for Item No. 23.

48. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2443 CDH-2 4-2-14 [65]
BURKART V. REDDY

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

See ruling for Item No. 23.

49. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2445 CDH-2 4-2-14 [64]
BURKART V. KUMAR

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

See ruling for Item No. 23.

50. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2452 CDH-2 4-2-14 [64]
BURKART V. BAL

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

See ruling for Item No. 23.

51. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2487 CDH-2 4-2-14 [63]
BURKART V. KUMAR

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

See ruling for Item No. 23.

52. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL
12-2501 CDH-2 4-2-14 [60]
BURKART V. SINGH

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

See ruling for Item No. 23.

53. 09-29162-D-11 SK FOODS, L.P.
09-2692 MAS-4
SHARP V. SSC FARMS I, LLC ET AL

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SERLIN & WHITEFORD, LLP FOR MARK A. SERLIN, OTHER PROFESSIONAL
3-31-14 [1063]

Tentative ruling:

This is the fourth and final application for approval of fees and reimbursement of expenses filed by The Law Office of Serlin and Whiteford, LLP for services rendered to the receiver. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

54. 09-29162-D-11 SK FOODS, L.P.
10-2014 RCG-5
SHARP ET AL V. SALYER ET AL

MOTION FOR COMPENSATION FOR ROBERT C. GREELEY, OTHER PROFESSIONAL
4-2-14 [811]

Tentative ruling:

This is the fourth and final application for approval of fees and reimbursement of expenses filed by Robert C. Greeley for services rendered to Chapter 11 estate. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

55. 14-22969-D-7 MICAH PENNINGTON
JHW-1
TD AUTO FINANCE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-1-14 [9]

Final ruling:

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

56. 13-35671-D-11 CARLYLE STATION LLC
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-13-13 [1]

57. 13-35671-D-11 CARLYLE STATION LLC
TMP-2
CONTINUED MOTION TO USE CASH COLLATERAL
1-27-14 [26]

58. 13-22972-D-7 THOMAS SMITH
TAA-2
MOTION TO SELL
3-26-14 [69]

Tentative ruling:

This is the trustee's motion to sell an undivided one-half interest in the real property commonly known as 112 Pleasant Street, Grass Valley, California, to Clifford and Margaret Weeks for $80,000. For the following reasons, the court intends to deny the motion. First, the moving party did not serve the IRS at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(a) and (c). The IRS holds a claim for $172,456 secured by tax liens recorded in Nevada County, where the property is located. Given the significant interest the IRS is likely to have in the proposed sale, the moving party should also have served the IRS at the other two addresses required by the same rule; he did not do so. Finally, the court would also require that service of any subsequent motion on the IRS include the motion, exhibits, and any other supporting documents, along with the notice of hearing. (The moving party served the notice of hearing only on the IRS (at an incorrect address), and did not serve the motion or exhibits.)

Next, there is insufficient evidence that the one-half interest the trustee seeks to sell is property of the estate. The motion states that the debtor "owns directly or indirectly" an undivided one-half interest in the property, adding that a preliminary title report filed as an exhibit shows the one-half interest as held by Thomas L. Smith (the debtor), Trustee of the Tom Smith Living Trust Dated August 15, 2007.[1] (The other one-half interest is held by Clifford and Margaret Weeks, the proposed purchasers from the trustee.) Thus, it appears that as of the date of the petition commencing this case, March 5, 2013, the debtor did not have an interest in the real property itself, although he apparently had an interest in the

trust that, in turn, owned a one-half interest in the property. The motion provides no explanation as to how the one-half interest in the property the trustee seeks to sell is property is the estate, and thus, subject to sale by the trustee, and there is no evidence on this point. In light of the uncertainty as to whether the estate has an ownership interest in the property, the court would consider fashioning relief in such a way that the estate would transfer whatever interest it has in the property to the proposed buyer, assuming the other problematic aspects of the motion are resolved.

Third, the motion does not suggest the extent, if any, to which the estate will benefit from the sale; indeed, it does not even state that the sale will benefit the estate. As indicated above, the property is subject to federal tax liens exceeding the proposed purchase price by more than double; there is also a judgment lien in favor of Capital One Bank that is junior to some of the tax liens and senior to others. The motion adds that the sale is to be "subject to consent of any tax agency or other party holding a valid lien against the real property," and the prayer asks that the trustee be authorized to pay any lien required by the IRS or other valid lienholder. There is no indication the trustee has obtained the consent of either the IRS or Capital One Bank to the sale, and no indication either will allow the estate some sort of "carve-out" that might be of benefit to the estate.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

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1 The title report describes as exceptions two different quitclaim deeds, one from the debtor to TSA Irrevocable Asset Trust Dated August 23, 2012, and another from the debtor, as trustee, to the debtor, as a single person. The first of those was recorded prior to the filing of the case; the second, after the filing. As to both of those, however, the title report states that at the time the deed was recorded, the grantor named therein appears to have had no record interest in the property, and has not acquired any interest since. Thus, it appears, although the court reaches no conclusions in this regard, that those quitclaim deeds had no effect on the state of title to the property.

59.	10-36676-D-7 13-2365 ACEITUNO V. BROWN, III ET AL	SUNDANCE SELF-STORAGE-EL DORADO LP KY-1	MOTION TO INTERVENE AND/OR MOTION TO AMEND 3-21-14 [19]

Tentative ruling:

This is the motion (1) of Peninsula Capital Group, Inc. ("Peninsula") to intervene in this adversary proceeding pursuant to Fed. R. Civ. P. 24, incorporated herein by Fed. R. Bankr. P. 7024; and (2) of Peninsula and Howard A. Brown III ("Brown") for leave to file a third-party complaint against Gerald Bruce Glazer and Glazer Bankruptcy (collectively, "Glazer"), pursuant to Fed. R. Civ. P. 14, incorporated herein by Fed. R. Bankr. P. 7014.1 The motion is opposed by the plaintiff, who is the trustee in the underlying chapter 7 case (the "trustee"), and by Glazer. For the following reasons, the motion will be denied.

By his complaint in this proceeding, the trustee seeks to recover from Brown and/or Don Smith, a named defendant who is not a moving party in this motion, the value of transfers totaling $70,495 made by Smith to Peninsula from funds of the debtor while it was a debtor-in-possession in this case, transfers alleged by the trustee to have been made for the benefit of Brown. The trustee also seeks to recover from Brown and Smith the value of the transfers plus an additional $15,500 as damages for alleged breach of fiduciary duty, conspiracy, and conversion of property of the estate. Finally, the trustee seeks disallowance of Brown's claim against the estate. The trustee already has a judgment against moving party Peninsula for $70,495, based on the transfers; thus, Peninsula is not at this point a party in this adversary proceeding.

The moving parties now seek to bring into the proceeding, by way of a third-party complaint, Gerald Glazer, the attorney they claim improperly advised them to make the transfers to Peninsula. As a preliminary matter, Peninsula contends its claims against Glazer share common questions of law and fact with Brown's claims against Glazer; and thus, Peninsula should be permitted to intervene in this proceeding.

Peninsula's Motion to Intervene

Peninsula seeks permissive intervention under Fed. R. Civ. P. 24(b)(1)(B), which "requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 843 (9th Cir. 2011). Peninsula fails at least the first of these tests.

The requirement of an independent ground for jurisdiction "stems . . . from [a] concern that intervention might be used to enlarge inappropriately the jurisdiction of the district courts. . . . This concern manifests itself most concretely in diversity cases where proposed intervenors seek to use permissive intervention to gain a federal forum for state-law claims over which the district court would not, otherwise, have jurisdiction." Freedom from Religion Found., 644 F.3d at 843. Although this is not a diversity case, Peninsula's proposed intervention otherwise fits squarely within this prohibition: Peninsula is seeking to intervene to gain a federal forum for state law malpractice claims against its former attorney over which this court would not otherwise have jurisdiction.

Peninsula attempts to find an independent jurisdictional ground by contending its claims against Glazer "arise in" and are "related to" the underlying chapter 7 case.[2] Peninsula argues that (1) the claims involve bankruptcy law advice – advice concerning whether the transfers were avoidable by the trustee under bankruptcy law; (2) that advice must be evaluated in light of professional standards in the bankruptcy community, matters that are more appropriate for determination by a bankruptcy judge than a state court judge; and (3) its claims against Glazer involve property of the bankruptcy estate. The first two contentions represent a misunderstanding of the law on "arising in" and "related to" bankruptcy jurisdiction; the third is factually wrong. Peninsula's claims against Glazer are for indemnity for damages sought by the trustee against Peninsula. Peninsula states that any funds it recovers from Glazer will be paid to the trustee on account of Peninsula's liability to the trustee. That funds recovered by a proposed intervenor might be paid into a bankruptcy estate does not make them, or the claims that generate them, property of the estate, and there is no basis on which the court can conclude Peninsula's claims against Glazer are property of the estate.

Claims requiring determinations of bankruptcy law or of professional standards in the bankruptcy community are not necessarily within the bankruptcy court's "arising in" or "related to" jurisdiction, and Peninsula's claims against Glazer, in fact, are not. "'[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." Harris Pine Mills, 44 F.3d 1431, at 1435. Examples include "core" proceedings listed in 28 U.S.C. § 157(b)(2) that are not based on a right expressly created by title 11, such as allowance or disallowance of claims, orders to turn over property of the estate, orders in respect to obtaining credit, and so on. See 1 Collier on Bankruptcy ¶ 3.01[3][e] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Courts have found that malpractice claims against a debtor's attorney based on services performed in the bankruptcy case "implicate the integrity of the entire bankruptcy process," and that adjudication of such claims is "an essential part of administering the estate." Thus, they have held that bankruptcy courts have "arising in" jurisdiction of such claims. Baker v. Simpson, 613 F.3d 346, 351 (2nd Cir. 2010); see also Geruschat v. Ernst Young LLP (In re Seven Fields Dev. Corp.), 505 F.3d 237, 260-63 (3rd Cir. 2007) (accountant malpractice); Grausz v. Englander, 321 F.3d 467, 471-72 (4th Cir. 2003).

> While the meaning of the statutory language "arising in" may not be entirely clear, it is clear to us that the bankruptcy court has the ability to review the conduct of attorneys . . . who are appointed by the court to aid a person in need of counsel in a proceeding pursuant to Title 11. The "bankruptcy court must be able to assure itself and . . . [those] who rely on the process that court-approved [professionals] . . . are performing their work[ ] conscientiously and cost-effectively." . . . [T]he claims here "inevitably involve[ ] the nature of the services performed for" the bankruptcy estate and "cannot stand alone."

Baker, 613 F.3d at 351 (citations omitted).

In this case, however, the malpractice, if it occurred, was on the part of an attorney for parties in the bankruptcy case – Peninsula and Brown – who, although they had a significant relationship with the debtor,[3] were not the debtor in the bankruptcy case; the debtor had separate counsel. Under these circumstances, the court has no greater jurisdiction over the claims against Glazer than it would have, for example, over claims by a creditor against its bankruptcy counsel. (Peninsula has submitted no authority for the proposition that this court would have "arising in" jurisdiction over malpractice claims against a creditor's attorney, and the court is aware of none.) In short, the fact that the services giving rise to the alleged malpractice were performed in a bankruptcy case, and thus, involve an interpretation of bankruptcy law and the standards of care applicable to bankruptcy attorneys, is wholly insufficient to confer "arising in" jurisdiction.[4]

Peninsula also asserts its claims are "related to" the bankruptcy case, citing authority that such jurisdiction "is very broad, including nearly every matter directly or indirectly related to the bankruptcy." Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Courtyard), 729 F.3d 1279, 1287 (9th Cir. 2013) (citations omitted; internal quotation marks omitted). Such jurisdiction is not, however, unlimited. Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1499 (1995). The test for "related to" jurisdiction is:

> whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's

> property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984).

Peninsula suggests any funds it recovers from Glazer would be paid to the trustee. True, this would enlarge the estate; however, this theory would extend bankruptcy court jurisdiction to every dispute in which the plaintiff promises to pay its recovery to a bankruptcy estate. For example, suppose Peninsula had a breach of contract claim against some third party wholly unrelated to the bankruptcy case, but proposed to turn over any recovery to the trustee in satisfaction of the trustee's judgment against Peninsula. Surely Peninsula would not contend this court would have jurisdiction of the breach of contract claim.[5]

For the reasons stated, the court concludes there is no independent ground for jurisdiction in this court over Peninsula's claims against Glazer; thus, Peninsula has not shown it is entitled to intervene in the proceeding, and its motion will be denied.

Brown's Motion for Leave to File a Third-Party Complaint

As the court has denied Peninsula's motion to intervene, its motion for leave to file a third-party complaint is denied as moot, leaving the court to consider Brown's motion for leave to file such a complaint. For the same reasons that pertain to Peninsula, discussed above, there is no independent ground for jurisdiction in this court of Brown's claims against Glazer. However, no independent basis for jurisdiction is required for a third-party complaint under Fed. R. Civ. P. 14(a). Federal Deposit Ins. Corp. v. Loube, 134 F.R.D. 270, 273 (N.D. Cal. 1991).[6] The rule provides that "[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it." Claims may be brought under the rule if they fall within the court's ancillary jurisdiction.

Ancillary jurisdiction "expand[s] the scope of federal courts by permitting parties to obtain a federal forum for claims which, by themselves, are not within the statutory jurisdiction of the federal courts." Blake v. Pallan, 554 F.2d 947, 956-57, n.11 (9th Cir. 1977). Thus, ancillary jurisdiction is invoked "to permit disposition by a single court of factually interdependent claims . . . ." Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1135 (9th Cir. 2010). Indemnity claims arising out of the same transaction that is the subject of the main action are subject to the court's ancillary jurisdiction. United States v. Twin Falls, 806 F.2d 862, 867 (9th Cir. 1986). Thus, it is arguable that this court has ancillary jurisdiction over Brown's claims against Glazer.

However, "[t]he decision to allow a third-party defendant to be impleaded under rule 14 is entrusted to the sound discretion of the trial court." United States v. One 1977 Mercedes Benz, 708 F.2d 444, 452 (9th Cir. 1983). The purpose of Rule 14(a) is "to promote judicial efficiency by eliminating the necessity for the defendant to bring a separate action against a third individual who may be secondarily or derivatively liable to the defendant for all or part of the plaintiff's original claim." Southwest Admrs., Inc. v. Rozay's Transfer, 791 F.2d 769, 777 (9th Cir. 1986). Thus, the court may exercise its discretion not to permit

the impleading of a third-party defendant where the impleader would "disadvantage the existing action," such as by complicating and lengthening the trial or by introducing extraneous issues. Id. The court may also consider whether the moving party delayed in bringing the motion, whether the impleader would delay the trial, and whether it would prejudice the original plaintiff. Irwin v. Mascott, 94 F.Supp.2d 1052, 1056 (N.D. Cal. 2000).

In this case, the court readily finds that the interest of judicial efficiency and economy would best be served by denying the motion. Peninsula asserts the same claims against Glazer as Brown; however, as discussed above, Peninsula will not be able to pursue those claims in this court. Permitting Brown to proceed against Glazer in this court would result in two parallel proceedings, with unnecessary duplication of cost and effort and the possibility of inconsistent outcomes. Further, Peninsula is already pursuing its claims against Glazer in state court; Brown suggests no reason he cannot do the same. "Ancillary jurisdiction should only be used 'when necessary to resolve bankruptcy issues, not to adjudicate state law claims that can be adjudicated in state court.'" North American Serv. Holdings, Inc. v. Erick M. Black, L.L.C., 2012 Bankr. LEXIS 1083, at *17 (9th Cir. BAP 2012), citing Battle Ground Plaza, 624 F.3d at 1136.

Finally, in light of the rulings in Stern v. Marshall, 131 S. Ct. 2594, 2608-20 (2011), and Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553, 565-66 (9th Cir. 2012), cert. granted, 133 S. Ct. 2880 (June 24, 2013), this court is unsure it would have constitutional authority to enter a final judgment on Brown's claims (or Peninsula's) against Glazer. 702 F.3d at 565. If not (and assuming for the sake of argument only the claims fall within this court's ancillary jurisdiction), the court would have authority only to submit its findings of fact and conclusions of law to the district court for de novo review. As a matter of judicial efficiency, and considering that Brown (and Peninsula) have another forum for their claims, the court will exercise its discretion not to use its ancillary jurisdiction to consider the claims (assuming it has such jurisdiction in the first place). Accordingly, Brown's motion for leave to file a third-party complaint will be denied.

The court will hear the matter.

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1 The motion and index of exhibits both refer to a third-party complaint, but the copy of the proposed third-party complaint is entitled a cross-claim. A cross-claim is a claim by one party against a co-party (see Fed. R. Civ. P. 13(g)), whereas the moving parties are attempting to bring in an individual and an entity that are not parties to the proceeding.

2 For purposes of jurisdictional considerations, a matter within this court's jurisdiction either "arises under" Title 11, "arises in" a bankruptcy case, or is "related to" a bankruptcy case. See 28 U.S.C. 1334(b); Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995). Thus, this matter, if anything, either "arises in" or is "related to" the underlying bankruptcy case, not both.

3 Brown was the president and sole owner of Peninsula, which was, in turn, the general partner of the debtor.

4 See Ross v. Yaspan, 2013 U.S. Dist. LEXIS 95710, at *10 (C.D. Cal. 2013):

While the legal malpractice claim would not exist without the bankruptcy case insofar as the malpractice claim concerns the attorney's handling of the bankruptcy case, the malpractice claim is a pure state law claim; it is not an "administrative" matter peculiar to the bankruptcy context involving, for instance, a court-appointed trustee. The attorney-client relationship is governed by the same state-law rules of professional conduct whether the action is a bankruptcy action or a family law proceeding; there are no special rules governing the relationship in a bankruptcy proceeding. Thus it is not clear to the court that the action in any sense "arises in" Title 11.

5 See Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1194, n.1 (9th Cir. 2005) ("we are not persuaded by the Appellees' argument that jurisdiction lies because the action could conceivably increase the recovery to the creditors. As the other circuits have noted, such a rationale could endlessly stretch a bankruptcy court's jurisdiction.").

6 Rule 14(a) provides: "A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it."

60.	09-20381-D-7 JAB-1 PROVIDENT SAVINGS BANK VS.	JOSEPH CLARK	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-1-14 [64]

Final ruling:

This matter is resolved without oral argument. This is Provident Savings Bank'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.

61.	11-35381-D-7 11-2656 ZURICH AMERICAN INSURANCE COMPANY ET AL V. SCOTT ET AL	MARK SCOTT	CONTINUED STATUS CONFERENCE RE: COMPLAINT 9-26-11 [1]

Tentative ruling:

On February 11, 2013, this court issued a judgment in favor of Zurich American Insurance Company, American Guarantee and Liability Insurance Company, and American Zurich Insurance Company ("Zurich"), and against Mark Cameron Scott ("Mark Scott") and Robert Gray Scott ("Robert Scott") (collectively, the "defendants"), jointly and severally, in the amount of $1,160,295.90, and declared the judgment to be nondischargeable pursuant to § 523(a)(4) of the Bankruptcy Code. The defendants appealed. On August 6, 2013, the district court remanded the action to this court for further proceedings in light of the United States Supreme Court's decision in Bullock v. BankChampaign, N.A., 133 S. Ct. 1754 (2013). The parties have now

briefed the issue. For the following reasons, the court concludes that, even under the heightened Bullock standards, the defendants' debt to Zurich resulted from defalcation while acting in a fiduciary capacity.[1]

In Bullock, the Court resolved a conflict among lower courts as to the degree of fault required for a finding of "defalcation" by a fiduciary under § 523(a)(4).[2] The issues in Bullock were whether a finding of defalcation requires a finding of scienter, and if so, the degree of scienter required. The Court held:

> where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent. Thus, we include reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary "consciously disregards" (or is willfully blind to) "a substantial and unjustifiable risk" that his conduct will turn out to violate a fiduciary duty. ALI, Model Penal Code §2.02(2)(c), p. 226 (1985). That risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

Bullock, 133 S. Ct. at 1759-60.

The court will consider the evidence bearing on these issues. First, the defendants were not novices in the insurance business. Mark Scott was continuously licensed as an insurance agent from 1980 until August of 2012, when his license expired. Robert Scott was continuously licensed as an insurance agent from 1978 to, apparently, at least the date of the hearing on this motion. In other words, both had been continuously licensed for roughly 30 years when the events giving rise to their liability transpired. Second, both held responsible positions with Trans Cal Associates ("Trans Cal"), an insurance agency that sold policies issued by Zurich. Mark Scott was Trans Cal's chief executive officer and Robert Scott was its president. The defendants were the sole officers, directors, and shareholders of the corporations that were the general partners in Trans Cal. The defendants were "the two ultimately responsible for authorizing the disbursement of funds from Trans Cal's operating, payroll and trust accounts," and they were "the only two individuals on Trans Cal's license with the ultimate authority from the California Department of Insurance to transact insurance business with carriers."[3]

Third, by the express language of the agreement between Trans Cal and Zurich, Trans Cal was obligated to hold the insurance premiums it collected, net of commissions, in trust for Zurich; Trans Cal was also bound not to make personal use of the premiums for any reason.[4] The defendants did not directly contend that they, individually, were not also obligated under these provisions of the agreement, although they did deny that they, individually, as opposed to Trans Cal, were in contract with Zurich; they also denied that they, individually, as opposed to Trans Cal, collected and paid premiums to Zurich. They also claimed that a subsequent agreement between Trans Cal and Zurich eliminated any individual liability on their part for failure to maintain the premiums in trust, leaving Trans Cal as the only obligor. The court rejected those arguments in its original ruling on the motion; the remand does not necessitate revisiting those issues. The court would add, however, that the defendants did not suggest there was any individual other than

themselves who was responsible on Trans Cal's behalf for maintaining the premiums in trust. In other words, their argument in essence was that there was no individual responsible for Trans Cal's performance under the agreement.

These facts support several conclusions. First, the defendants' failure to maintain the premiums in trust, or to cause Trans Cal to maintain them in trust, was an act of moral turpitude. As Zurich points out, the California Insurance Code provides that "[a]ll funds received by any person acting as a licensee . . . as premium or return premium on or under any policy of insurance or undertaking of bail, are received and held by that person in his or her fiduciary capacity." Cal. Ins. Code § 1733. Further, "[a]ny such person who diverts or appropriates those fiduciary funds to his or her own use is guilty of theft and punishable for theft as provided by law." Id.[5] Theft, in turn, is an act of moral turpitude. People v. Cudjo, 6 Cal. 4th 585, 626 (1993) ["Grand theft necessarily involves both moral turpitude and dishonesty."]; see also In re Honoroff, 15 Cal. 3d 755, 758 (1975) [describing petty theft as "a crime involving moral turpitude"]. Thus, the defendants' conduct in failing to maintain the premiums in trust for Zurich was, by the definition of the California Insurance Code, an act of theft, involving, under California case law, moral turpitude. Under the Bullock standards, it was an act akin to fraud, embezzlement, and larceny (see Bullock, 133 S. Ct. at 1759-61), and thus, of sufficient gravity for scienter purposes to constitute defalcation. Thus, under Bullock, the court need not look to the lesser "fault" standards of reckless disregard and willful blindness required by the new heightened requirement. See id.[6]

However, the court will do so for the sake of thoroughness. Thus, the above facts also support the conclusions that the defendants consciously disregarded and were willfully blind to their fiduciary responsibilities to Zurich under the agreement and under the California Insurance Code. That is, they were willfully blind to "a substantial and unjustifiable risk" that their conduct would turn out to violate their fiduciary duty to Zurich. That risk was, in the language of the Bullock Court, "of such a nature and degree that, considering the nature and purpose of the [defendants'] conduct and the circumstances known to [them], its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the [defendants'] situation." Bullock, 133 S. Ct. at 1760. As insurance agents with decades of experience, the defendants operated Trans Cal with the knowledge that their conduct in allowing the amount of the premiums collected and retained by Trans Cal to fall below the balance of net premiums due Zurich would amount to a breach of their fiduciary duty to maintain the net premiums in trust until paid to Zurich. In fact, although they make many other arguments, the defendants have not actually denied having such knowledge.

The defendants, however, would require proof of additional facts. Their overall proposition is that "Trans Cal conducted its business operations believing that its accounts were current and with no intent to do harm." Defendants' Opposition, filed April 2, 2014 ("Opp."), at 8:21-22. The first of these propositions is not accurate; the second, assuming without deciding that it is accurate, is irrelevant, as Bullock establishes no requirement that the debtor must have intended to do harm. The evidence cited by the defendants for these propositions is this testimony of Mark Scott:

- "At no time did I nor [sic] my brother intend to divert any premium income to which Zurich was entitled. The Assertion of Rights Agreement terminated our relationship with Zurich as of December 31, 2009."

• "The amounts claimed due by Zurich after December 31, 2009 were a surprise to me. I have made attempts since to reconcile the figures but without success. The $898,000.00 figure that we offered to pay at one point did not take into account the old Empire records and other set offs."

Declaration of Mark C. Scott, filed Aug. 15, 2012 ("Decl."), at ¶¶ 9, 11. These statements do not support the propositions for which they are cited; namely, that "Trans Cal conducted its business operations believing that its accounts were current and with no intent to do harm." The first of Mark Scott's statements suggests the defendants viewed the Assertion of Rights Agreement as terminating any obligation they had to maintain Trans Cal's premiums in trust. The court addressed and rejected the argument in its original ruling. Further, the question is not whether the defendants intended to divert or to allow Trans Cal to divert the premiums.[7] The question is whether the defendants were willfully blind to a substantial and unjustifiable risk that diversion of the premiums would violate their fiduciary duty to Zurich. That risk, the court concludes, was of such a nature and degree that, considering the nature and purpose of the defendants' conduct and the circumstances known to them, their disregard of the fact that the balance of net premiums held by Trans Cal was falling below the amount due Zurich constituted a gross deviation from the standard of conduct a law-abiding insurance agent would observe in their situation.

The second statement quoted above – that the amounts claimed by Zurich were a surprise to Mr. Scott, that he was unable to reconcile the figures, and that the $898,000 the defendants offered in settlement did not account for certain offsets – does not support the conclusion that Trans Cal believed its account were current. The offsets the defendants sought to prove fell far short of offsetting the entirety – nearly $1 million – by which Trans Cal's account was deficient.[8] The defendants have submitted no evidence to support a conclusion they thought the account was current, nor have they, to the court's best recollection, even made such an argument until now.

Breaking down their general proposition, the defendants claim, first, "[i]t is relevant to know how long [Trans Cal's records] were inaccurate and to what extent and why." Opp. at 8:25. These facts might be relevant; they are not, however, necessary. The question on remand is not the amount of the net premiums not paid to Zurich or why Trans Cal's records were wrong. The only question, assuming the defendants' conduct did not involve moral turpitude (and the court has already found that it did) is whether they consciously disregarded or were willfully blind to a substantial and unjustifiable risk that their conduct in allowing the balance of premiums retained by Trans Cal – whatever the reason – to fall below the amount of net premiums due Zurich would constitute a violation of their fiduciary duty to Zurich.

The defendants lay great emphasis on their track record, claiming Trans Cal had been in business with Zurich's predecessor since 1985, had up to 45 employees in its last decade, and generated over $60 million in premiums for Zurich and its predecessor in that decade. They conclude that "[t]he sheer volume of business, and the length of time during which Trans Cal was successful with no significant disciplinary record, operate to negate any bad faith or moral turpitude argument." Opp. at 9:1-3. The California Insurance Code makes no such distinctions – a diversion of premiums held in trust, regardless of when it occurs or over what length of time, is theft, and under California case law, it involves moral turpitude. And, the court concludes, a diversion of premiums held in trust, if permitted by persons who are obviously acting in conscious disregard of and while

willfully blind to the knowledge that their conduct violates their fiduciary duty, constitutes a defalcation within the meaning of Bullock.

Next, the defendants cite three cases for the proposition that "payment of business expenses for non-trust purposes is not, per se, intentional" for purposes of nondischargeability under § 523(a)(4) or § 523(a)(6). The two cases construing § 523(a)(6) are cited as being analogous to § 523(a)(4). They are not, as they do not involve fiduciary duties at all.[9] The case construing § 523(a)(4), Denton v. Hyman (In re Hyman), 502 F.3d 61 (2nd Cir. 2007), was cited in Bullock as falling into the group of cases that had, prior to Bullock, applied a recklessness or conscious disregard standard. Hyman concerned the fiduciary duty owed by an officer, director, and 50% owner of a corporation to the probate estate of the other officer, director, and owner. The court held that collateral estoppel did not apply to a lower court's finding of nondischargeability under § 523(a)(4) because the lower court had made no express findings as to the debtor's state of mind. 502 F.3d at 69. Further, the debtor's use of income from his new agency to pay off debts on which he and the probate estate were both liable would support a finding of good faith that "could militate against the required showing of recklessness or conscious misbehavior." Id. at 69-70.

There is no evidence in this case that the defendants used their own funds to Zurich's benefit. To the extent, if any, Bullock requires specific findings of the defendants' state of mind, the court makes those findings here, determining that, given the defendants' years of experience, their sole responsibility for Trans Cal's compliance with its agreement with Zurich, and their personal fiduciary responsibilities imposed by California law, they acted with recklessness or conscious disregard toward those fiduciary responsibilities. The court rejects the defendants' specific contention that to the extent they used premiums for purposes other than paying Zurich, they did so for Trans Cal's business purposes, including reimbursing premiums to customers whose policies had cancelled. The parties' agreement provided that Trans Cal "shall not, under any circumstances, make personal use of such funds, either in paying expenses or otherwise." California law was to the same effect. Further, as discussed in the court's original ruling, the defendants' claim to have "substantiated" such return premiums paid in the amount of at least $488,000 was not substantiated by admissible evidence timely submitted.

Third, the defendants contend "Zurich's chronically bad accounting . . . dilutes any bad faith argument." Opp. at 10:7-10. A court interpreting the new heightened Bullock standards, in Colson, 2013 Bankr. LEXIS 4001, rejected a similar theory. The debtor in that case owned a title insurance company that issued title insurance policies on behalf of Lawyers Title and its successor, Fidelity National Title. The debtor permitted his company to release liens without paying the lienholders, which constituted a breach of its duty to the lenders. In concluding that the debtor's conduct met the heightened Bullock standards for defalcation, the court rejected the debtor's argument that Lawyers Title was to blame for the premium deficiency.

> [The debtor] relies upon the QARs [quality assurance reviews performed by Lawyers Title] as evidence that he had no motive to self-deal: because he was subjected to numerous audits by Lawyers Title and was told continually by Lawyers Title that there were no serious problems in the escrow accounts, he insists he had no reason to know about the escrow deficiencies. The Court views [the debtor's] reliance on the QARs as his attempt to delegate onto Lawyers Title the fiduciary duty he himself owed to the lenders. Although it is possible that Lawyers Title was negligent

in performing the QARs, that issue is immaterial in assessing [the debtor's] duty to the lenders. Moreover, the QARs were conducted for the benefit of Lawyers Title, not [the debtor].

Colson, 2013 Bankr. LEXIS 4001, at *105-06. Similarly, here, the defendants had a fiduciary duty to Zurich to account for and turn over all net premiums received by Trans Cal in trust for Zurich. The defendants' own records should have been sufficient to provide an accurate accounting; as amply discussed in the court's original ruling, they were not. There is no basis on which to shift the burden of the accounting to Zurich.

Finally, the defendants claim "Trans Cal was at all times operated responsi[bly] and in good faith pursuant to industry practices and procedures." Opp. at 10: 11-12 (internal capitals omitted). They cite Trans Cal's use of a sophisticated computer program designed for the insurance industry, along with Mark Scott's testimony that "[a]ll policy holders who cancelled a policy received a refund as due." Decl. at ¶ 10. These points, assuming without deciding they are true, are irrelevant. The sophisticated computer program demonstrates only that the defendants should have had the capability of accounting for Zurich's net premiums at any time, and certainly, years after litigation commenced, whereas they did not. The repayment of premiums to holders of cancelled policies demonstrates nothing as regards the defendants' duties to Zurich.[10]

To conclude, the court rejects the defendants' theory that, in light of Bullock, they should be allowed to introduce additional evidence on the issues of (1) how accurate Trans Cal's records were and when and how they became inaccurate; (2) whether Zurich contributed to Trans Cal's inaccurate records by inaccurate statements; (3) whether premium proceeds were spent entirely on the business; (4) whether Trans Cal operated in conformity with standard business practice; (5) how much of their own money the defendants contributed to the business; and (6) whether it is reasonable the defendants would have been aware of any inaccuracies. Assuming questions 2, 3, and 4 were answered in the affirmative, and assuming question 5 were answered with a significant amount, it would make no difference to the court's conclusions because none of those factors would excuse the defendants from complying with their own fiduciary duties to Zurich to be sure the balance in Trans Cal's account did not fall below the amount of net premiums due Zurich. Nor would any of those factors affect the court's determination that the defendants' conduct in allowing that imbalance deviated grossly from the standard of conduct a law-abiding insurance agent would have observed, given the same background the defendants had and the circumstances that must have been known to them as licensed insurance agents; namely, that their failure to maintain the net premiums in trust would violate their fiduciary duty to Zurich.

As to question 6, the court has more than sufficient evidence already to allow it to conclude that the defendants reasonably should have been aware of inaccuracies in Trans Cal's records. But even if the evidence were otherwise, it would not negate the conclusion, which the court reaches, that the defendants had a duty to be aware of an imbalance in the account; that is, that the funds remaining fell below the amount owed to Zurich, especially when the imbalance grew to such a large amount as almost $1 million (or even, by the defendants' reckoning, half a million dollars). The court declines the defendants' apparent invitation to conclude that, when viewed in light of the $60 million in premiums the defendants allegedly produced for Zurich, the imbalance in the account was insignificant. Finally, as to question 1, the court needs no further evidence of how accurate Trans Cal's records were and when and how they became inaccurate. The defendants' primary challenge has

been to Zurich's accounting, yet they were noticeably unable to meet their burden, in responding to a prima facie case supporting summary judgment, to produce evidence significantly probative to overcome Zurich's case. See United Steel Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989). There is no reason at this late date to give them yet more time.

Finally, the court is aware of the new exhibit submitted by Zurich with its reply to the defendants' opposition, and of the declaration of Mark Scott purporting to explain why the exhibit is not relevant to this matter. The evidentiary record in this matter has long since closed; thus, the court has considered neither the exhibit nor the declaration.

For the reasons stated, the court concludes that, under the heightened standards of Bullock, the defendants' conduct in this case amounted to defalcation while acting in a fiduciary capacity, and the judgment will stand. The court will hear the matter.

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1 The issue of the defendants' fiduciary capacity is not part of the remand order; the only question for this court is whether the defendants' conduct amounted to "defalcation" under the Bullock test.

2 On one end of the spectrum, in the Ninth Circuit, "even innocent acts of failure to fully account for money received in trust" was held to constitute defalcation. See Bullock, 133 S. Ct. at 1758, quoting Sherman v. SEC (In re Sherman), 658 F.3d 1009, 1017 (9th Cir. 2011) (internal quotation marks and brackets omitted).

3 Defendants Mark C. Scott and Robert Gray Scott's Response to Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment, filed August 15, 2012, 3:13-15, 4:1-3.

4 The agreement could hardly have been clearer. It provided that all premiums collected by Trans Cal were Zurich's property and held by Trans Cal as trust funds, that Trans Cal had no interest in such funds and must not make any deduction therefrom, except for commissions, before paying them over to Zurich, and that Trans Cal "shall not, under any circumstances, make personal use of such funds, either in paying expenses or otherwise." Zurich's Ex. G, sec. 2(C).

5 This has been the law in California since well before the defendants were licensed as insurance agents. See Stats. 1959 ch 4 § 2, effective February 27, 1959. Amended Stats. 1983 ch 356 § 6; Stats. 1990 ch 1420 § 58 (SB 2642), operative January 1, 1992; Stats. 2006 ch 740 § 8 (AB 2125), effective January 1, 2007; Stats. 2008 ch 300 § 6 (AB 2044), effective January 1, 2009.

6 The Bullock Court suggested that its new heightened standards for defining defalcation will generally make a difference for fiduciaries not acting in a professional capacity.

> In the absence of fault, it is difficult to find strong policy reasons favoring a broader exception here, at least in respect to those whom a scienter requirement will most likely help, namely nonprofessional trustees, perhaps administering small family trusts potentially immersed in intrafamily arguments that are difficult to evaluate in terms of comparative fault.

Bullock, 133 S. Ct. at 1761. Although the defendants in this case argue they were not "professional trustees," "such as the trust department of a bank or an escrow trust" (Opp. at 14:19-20), they plainly did not fall in the category of trustees of small family trusts mentioned in Bullock. Although the defendants may not have been professional trustees, they were insurance professionals, with the ultimate responsibility, within Trans Cal, for handling millions of dollars worth of insurance premiums that, net only of commissions, were, by contract and by California law that must have been known to them as long-time insurance agents, required to be held in trust for Zurich and not to be expended for any other purpose.

7 One court construing Bullock has held that "the Supreme Court did not impose a requirement of specific intent." Fid. Nat'l Title Ins. Co. v. Colson (In re Colson), 2013 Bankr. LEXIS 4001, at *103 (Bankr. S.D. Miss. 2013). "[The debtor], therefore, may not escape from his debt arising out of defalcation by simply saying he had no specific intent to divert the missing trust funds." Id. "Of course, a debtor accused of defalcation is not likely to admit that he intended to divert trust funds. In the absence of such an admission, it is the surrounding facts and circumstances that provide the equivalent level of wrongdoing." Id. at 103-04.

8 The original ruling amply addresses the issue of the claimed offsets.

9 Those cases are In re Littleton, 942 F.2d 551 (9th Cir. 1991), and In re Shah, 96 B.R. 290 (Bankr. C.D. Cal. 1989). In each, the court found that the debtor's use of a creditor's collateral in the sincere hope of keeping the debtor's business going did not constitute willful and malicious behavior under § 523(a)(6). Littleton, 942 F.2d at 555; Shah, 96 B.R. at 295.

10 The defendants cite Cal. Ins. Code § 1734, which allows a licensed insurance agent holding fiduciary funds to "commingle with such fiduciary funds . . . such additional funds as he may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return commissions or for such contingencies as may arise in his business of receiving and transmitting premium or return premium funds . . . ." The key word the defendants overlook here is "additional" funds; that is, if they chose to commingle funds, they were required to deposit into the commingled account funds additional to the net premiums from which to pay those other expenses; the evidence shows they did not.

62.	11-33281-D-7 HCS-2	DONALD/JULIE ANDERSON	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY 3-27-14 [40]

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.

63. 14-22282-D-7 BRETT/SERENA PITTMAN
MDE-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-31-14 [9]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company'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.

64. 12-40188-D-7 JOHN/ROSARIO KENERY
DNL-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEE'S ATTORNEY
4-2-14 [42]

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.

65. 13-35489-D-7 CHRISTIAN CAIN

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-3-14 [17]

Final ruling:

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

66. 14-21793-D-7 LORETA BASA
APN-1
AMERICREDIT FINANCIAL SERVICES, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-26-14 [10]

Final ruling:

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

67. 13-21595-D-7 PATRICIA CUNNINGHAM — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
PA-6 — 9-27-13 [120]

Final ruling:

This objection has been dismissed by way of stipulated order. The matter will be removed from calendar.

68. 14-23398-D-11 JANE LYNCH — PRELIMINARY STATUS CONFERENCE RE: VOLUNTARY PETITION
4-1-14 [1]

69. 13-21199-D-7 JAMES SCOTT — MOTION TO ABANDON
DNL-13 — 3-21-14 [244]

Final ruling:

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

70. 13-24124-D-7 CHRISTOPHER BALAAM — MOTION TO COMPEL ABANDONMENT
FF-2 — 4-11-14 [30]

71.	13-32643-D-7 DRE-1	NDILE NJENGE AND RACHEL EKINDESONE	MOTION TO CONVERT CASE TO CHAPTER 13 4-7-14 [31]

Final ruling:

This is the debtors' motion to convert this case to chapter 13. The motion will be denied for the following reasons. First, the attorney who signed the motion and related documents has not been associated in to the case as counsel for the debtors in accordance with the applicable local rule. This case was commenced by Donald W. Ullrich, Jr., as attorney for the debtors, whereas this motion and the related documents were signed by D. Randall Ensminger, as attorney for the debtors. Mr. Ensminger has not appeared in this case in any of the ways described in LBR 2017-1(b)(2), and has not substituted in to the case as the debtors' counsel. Thus, his attempted association into the case as co-counsel for the debtors[1] was required to comply with LBR 2017-1(j); it did not. That subpart of the rule requires that "any attorney not substituted in as attorney of record under Subpart (h) of this Rule and not authorized to participate under other provisions in this Rule must file a notice of association, signed by an attorney of record and the associating attorney, and served on all parties." LBR 2017-1(j) (emphasis added). Mr. Ensminger's "Advice of Counsel" and "Notice of Entry of Appearance," both filed April 7, 2014, are signed only by Mr. Ensminger and not by the attorney of record, Mr. Ullrich. Further, those documents were served only on the trustee, the United States Trustee, and Mr. Ullrich, and not on the creditors.

In addition to this defect, the "Advice of Counsel" states that Mr. Ensminger "has been retained to convert this case to one under Chapter 13 . . . ." In contrast, the local rule requires that "an attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case," except that the attorney is not required to appear in an adversary proceeding. LBR 2017-1(a)(1). The rule provides for a limited appearance only for the purpose of contesting an application for a temporary restraining order or preliminary injunction. See LBR 2017-1(f). To the extent Mr. Ensminger proposes his role in this case be limited to a motion to convert, that would not comply with the local rule.

Second, the notice of hearing did not comply with local rules. The moving parties gave only 23 days' notice of the motion; thus, the moving parties were required to advise potential respondents in the notice of hearing that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). They did this; however, the notice also stated, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . as well as [the trustee and the United States Trustee]." Notice of Hearing, filed April 7, 2014, at 2:5-8. The notice concluded with this admonition: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion." Id. at 2:14-15. The steps described in the notice regarding the mailing of written opposition are not required by the local rules for a motion brought under LBR 9014-1(f)(2), and the admonition that the court may grant the motion if the respondent does not take these steps is plainly inaccurate. These directions and admonition may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

Third, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. In the proof of service, the declarant certifies under penalty of perjury that she is over the age of 18 and not a party to this action. The declarant "further certif[ies]," but not under penalty of perjury, the factual allegations as to service. This did not comply with the applicable statute.

Finally, the proof of service does not adequately state the manner of service. It states only that the declarant served the documents by placing true copies in sealed envelopes with postage pre-paid, addressed to the parties on the attached list. The proof of service does not indicate that the envelopes, as so addressed, were mailed via U.S. Mail or otherwise served.

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

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1 See Notice of Entry of Appearance, filed April 17, 2014, at 1:16-17 [Mr. Ensminger "hereby enters his appearance as co-counsel" for the debtors.].

72.	14-22656-D-7 RSS-1 DEUTSCHE BANK NATIONAL TRUST COMPANY VS.	JACK MICHELSON	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-4-14 [9]

Final ruling:

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

73.	14-22957-D-7 RSS-1 JPMORGAN CHASE BANK, N.A. VS.	JAY STOVEL	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-11-14 [18]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

74.	13-35671-D-11 TMP-4	CARLYLE STATION LLC	CONTINUED MOTION TO VALUE COLLATERAL OF HERITAGE BANK OF COMMERCE 1-31-14 [52]

75.	13-35189-D-7	ARASH EBRAHIMI AND KATHARINE BAUER	ORDER TO SHOW CAUSE 4-9-14 [31]
76.	14-22492-D-12	CHARLES CORNELL	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-12-14 [1]