

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 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.	14-25201 -D-7	RAM GOPAL	MOTION TO COMPEL ABANDONMENT
	DAO-1		7-2-14 [15]

Final ruling:

This is the debtor's motion to compel abandonment of certain business assets. Although no opposition has been filed, the court is not prepared to grant the motion because of procedural defects. The proof of service is not signed under oath, as required by 28 U.S.C. § 1746, and does not state the date of service. As such, the motion will be denied by minute order. No appearance is necessary.

2.	13-33804 -D-7	RHONDA	CONTINUED MOTION TO COMPEL
	RSS-2	STIJAKOVICH-SANTILLI	ABANDONMENT
			4-29-14 [40]

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|----|--|---------------------------------|--|
| 3. | 13-24507 -D-7
CWS-3 | DKW PRECISION MACHINING
INC. | MOTION FOR AUTHORITY TO OPERATE
THE BUSINESS OF DEBTOR FOR A
LIMITED PERIOD OF TIME
6-27-14 [142] |
| 4. | 13-24507 -D-7
CWS-4 | DKW PRECISION MACHINING
INC. | MOTION TO SELL
7-2-14 [150] |
| 5. | 13-24507 -D-7
CWS-5 | DKW PRECISION MACHINING
INC. | MOTION TO ABANDON
7-2-14 [156] |
| 6. | 13-33810 -D-7
CM-1 | ERLINDA GRAHAM | MOTION TO COMPEL ABANDONMENT
7-1-14 [29] |

Final ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

7. [14-21317](#)-D-7 ALINA LEBEDCHIK MOTION TO CONVERT CASE FROM
MS-1 CHAPTER 7 TO CHAPTER 13
5-13-14 [[23](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to convert case from Chapter 7 to Chapter 13 is supported by the record. As such the court will grant the motion and the case will be converted to a case under Chapter 13 by minute order. No appearance is necessary.

8. [14-25820](#)-D-11 INTERNATIONAL MOTION TO EMPLOY CHRISTOPHER D.
DMC-1 MANUFACTURING GROUP, INC. SULLIVAN AS SPECIAL COUNSEL
7-2-14 [[82](#)]

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

9. [14-25820](#)-D-11 INTERNATIONAL MOTION TO EMPLOY THOMAS A.
FWP-4 MANUFACTURING GROUP, INC. WILLOUGHBY AS ATTORNEY(S)
7-2-14 [[69](#)]

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

10. [14-25820](#)-D-11 INTERNATIONAL MOTION TO EMPLOY GABRIELSON &
FWP-5 MANUFACTURING GROUP, INC. COMPANY AS ACCOUNTANT(S)
7-2-14 [[74](#)]

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

11. [06-22532](#)-D-7 RIO MORALES
DNL-4

MOTION FOR COMPENSATION FOR
STEVEN H. SCHULTZ, SPECIAL
COUNSEL(S)
7-1-14 [[483](#)]

Final ruling:

This is the application of Steven H. Schultz for payment of attorney's fees and reimbursement of costs. The motion will be denied for the following reasons: (1) contrary to LBR 9014-1(c), the moving party utilized a docket control number that was not formatted in accordance with the court's local rule and that has been used before in this case, which has created confusion in the docket,¹ and (2) the moving party served the debtors, their counsel, the trustee's counsel, the United States Trustee, and the parties requesting special notice with the notice of hearing, declaration, and exhibits, but not the application itself. For these reasons the motion will be denied without prejudice.

The motion will be denied by minute order. No appearance is necessary.

12. [14-25835](#)-D-7 MICHAEL/WANDA KINNUNEN
NLG-1
QUICKEN LOANS INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-26-14 [[12](#)]

Final ruling:

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

13. [14-25543](#)-D-7 ROBIN MOBERG MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
5-27-14 [[7](#)]
14. [12-28052](#)-D-15 CEDENCO JV AUSTRALIA PTY LTD MOTION TO CLOSE CASE UNDER
JSM-1 CHAPTER 15
7-2-14 [[118](#)]
15. [12-32054](#)-D-11 AJW PROPERTIES, LLC MOTION TO CONVERT CASE FROM
UST-2 CHAPTER 11 TO CHAPTER 7 (FILING
FEE NOT PAID OR NOT REQUIRED),
MOTION TO DISMISS CASE
6-27-14 [[123](#)]
16. [09-29162](#)-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION BY THE
DB-29 LAW OFFICE OF DOWNEY BRAND LLP
CREDITOR COMM. ATY(S)
7-2-14 [[4920](#)]

Tentative ruling:

This is the fifteenth interim application for approval of fees and reimbursement of expenses filed by Downey Brand, LLP for services rendered to the creditors' committee. 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.

17. [09-29162](#)-D-11 SK FOODS, L.P.
SH-266

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCHNADER HARRISON
SEGAL & LEWIS LLP TRUSTEE'S
ATTORNEY(S)
7-2-14 [[4934](#)]

Tentative ruling:

This is the fifteenth interim application for approval of fees and reimbursement of expenses filed by Schnader Harrison Segal & Lewis, LLP for services rendered to the Chapter 11 trustee. 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.

18. [09-29162](#)-D-11 SK FOODS, L.P.
SH-267

MOTION FOR COMPENSATION FOR
BRADLEY D. SHARP, CHAPTER 11
TRUSTEE(S)
7-2-14 [[4930](#)]

Tentative ruling:

This is the Fourteenth interim application for approval of fees and reimbursement of expenses filed by Bradley D. Sharp the Chapter 11 trustee. 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.

19. [09-29162](#)-D-11 SK FOODS, L.P.
SH-268

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF NORTON ROSE
SPECIAL COUNSEL(S)
7-2-14 [[4936](#)]

Tentative ruling:

This is the sixth interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, barristers to the Chapter 11 trustee. 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 of the fees requested. 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 hear the matter.

20. [09-29162](#)-D-11 SK FOODS, L.P.
SH-269

MOTION FOR COMPENSATION FOR
EICHSTAEDT & LERVOLD LLP,
ACCOUNTANT(S)
7-2-14 [[4940](#)]

Tentative ruling:

This is the tenth interim application for approval of fees and reimbursement of expenses filed by Eichstaedt & Lervold, LLP, account to the Chapter 11 trustee. 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 of the fees requested. 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 hear the matter.

21. [09-29162](#)-D-11 SK FOODS, L.P.
SH-270

MOTION FOR COMPENSATION FOR
PLATINUM ADVISORS, LLC,

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Platinum Advistors, LLC, consultants to the Chapter 11 trustee. 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 of the fees requested. 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 hear the matter.

22. [09-29162](#)-D-11 SK FOODS, L.P.
SH-271

MOTION FOR COMPENSATION FOR
GREELEY, LINDSAY CONSULTANT
GROUP, OTHER PROFESSIONAL(S)
7-2-14 [[4948](#)]

Tentative ruling:

This is the first interim application for approval of fees and reimbursement of expenses filed by Greeley, Lindsay Consultant Group, consultants to the Chapter 11 trustee. 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 of the fees requested. 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 hear the matter.

23. [13-35063](#)-D-7 PETER/ALISON BIPPART
[14-2070](#) SRL-1
COYNE, III V. BIPPART ET AL

MOTION TO DISMISS CAUSE(S) OF
ACTION FROM COMPLAINT
6-26-14 [[17](#)]

Final ruling:

This is the plaintiffs' motion for an order dismissing with prejudice a claim for relief contained in his original complaint in this adversary proceeding. The motion will be denied for the following reasons.

First, the motion was not properly served. The chapter 7 trustee and the United States Trustee were served by mail; however, the proof of service states that the defendants' attorney was not. Instead, the proof of service states that he was to be served by the court's CM/ECF system. Specifically, the proof of service states, "On the date written above, I electronically filed the foregoing documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the persons listed below in accordance with the Federal Rules of Civil Procedure." Certificate of Service, filed June 26, 2014, at 2:10-11. However, this court's local rules do not permit service in that manner. Pursuant to Fed. R. Civ. P. 5(b)(3), incorporated herein by Fed. R. Bankr. P. 7005, a party may rely on the court's transmission facilities to make electronic service, if a local rule so authorizes. However, this court's local rules provide that service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) "shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served." LBR 7005-1(d)(1). The rule specifies certain items that must be included in the e-mail. See id. In other words, if electronic service is to be used, the moving party must actually serve the other parties by electronic mail, and not rely on service to be made by the court's CM/ECF system.

Second, because the motion seeks to dismiss a § 727(a) claim, the court will require that any motion to dismiss it be noticed on the chapter 7 trustee, the United States Trustee, and all creditors in the underlying chapter 7 case. See Fed. R. Bankr. P. 7041 [requiring service on the trustee, the United States Trustee, and such other persons as the court may direct]. The court recognizes that the matter is complicated in this case by the fact that the plaintiff, without filing a motion to dismiss the § 727(a) claim, later filed an amended complaint in which he simply omitted that claim. Although, at the time the plaintiff filed the amended complaint, the time for him to do so as a matter of course had expired, the parties stipulated in writing that he could file an amended complaint up to and including May 15, 2014, which he did. Thus, the filing of the amended complaint was permitted by Fed. R. Civ. P. 15(a)(2), incorporated herein by Fed. R. Bankr. P. 7015. However, because a complaint objecting to the debtor's discharge "shall not be dismissed" without the required notice (Fed. R. Bankr. P. 7041), the filing of the amended complaint did not have the effect of superseding the original complaint, at least insofar as the § 727(a) claim is concerned.

For the reasons stated, the motion will be denied without prejudice. The motion will be denied by minute order. No appearance is necessary.

24. [14-23964](#)-D-7 LEE/MARLIS KING
MTM-1

MOTION TO AVOID LIEN OF
AMERICAN CONTRACTOR INDEMNITY
CO.
6-23-14 [[16](#)]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by American Contractors Indemnity Company (the "creditor"). The motion will be denied because

the moving parties failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the creditor (1) through the attorneys who obtained its abstract of judgment; and (2) to the attention of "Anna Noveman, Agent for Service of Process" at an address on South Figueroa in Los Angeles. The first method was insufficient because there is no evidence the attorneys are authorized to receive service of process on behalf of the creditor in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See Beneficial Cal, Inc. V. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because where service is made to the attention of an agent for service of process, it must be to the attention of an agent actually authorized by appointment or by law to receive service of process (see Fed. R. Bankr. P. 7004(b)(3)), whereas the court takes judicial notice that the California Secretary of State lists the creditor's registered agent for service of process as National Registered Agents, Inc., at an address on Seventh Street in Los Angeles. The moving party has submitted no evidence that Anna Noveman is an agent actually authorized by appointment or by law to receive service of process for the creditor.

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

25. [13-35066](#)-D-7 JOAN POTTERTON
DMB-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF COWAN AND BRADY
FOR DAVID M. BRADY, TRUSTEE'S
ATTORNEY(S)
6-25-14 [[39](#)]

Final ruling:

This is the motion of Cowan & Brady ("Counsel") for compensation for services rendered as the trustee's counsel in this case. The motion will be denied for the following reasons: (1) only the first page of the motion was filed; (2) the moving party served the motion, declarations, exhibits, and proof of service, but not the notice of hearing; (3) the moving papers do not identify the individual who billed at \$100 per hour for half the time charged in the case, and fail to describe his or her qualifications which render that hourly rate appropriate; and (4) the time entries raise questions as to whether the time spent was billed contemporaneously with the services performed, and thus, as to whether the time spent was reasonable.

In this latter regard, the court notes that of the nine time entries shown on Counsel's time sheet, eight are in increments of one-half hour; that is, three entries are for 1.5 hours, three are for 1.0 hour, and two are for 0.5 hour. For each of three different motions, Counsel billed exactly 1.5 hours to prepare it and 1.0 hour to review and amend it, whereas it seems unlikely that each of three different motions (a motion to employ counsel, a motion to employ a broker, and a motion to sell property) took exactly the same amount of time. Thus, the court questions whether Counsel actually billed simultaneously with the services being performed.

For the reasons stated, the motion will be denied without prejudice. The motion will be denied by minute order. No appearance is necessary.

26. [14-23098](#)-D-7 JAIME/YOLANDA ARAUJO MOTION TO AVOID LIEN OF BH
MMP-2 FINANCIAL SERVICES
6-30-14 [[22](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

27. [11-42209](#)-D-7 AMERICAN PRIVATE MOTION FOR COMPENSATION BY THE
CDH-7 SECURITY INC. LAW OFFICE OF HUGHES LAW
CORPORATION FOR CHRISTOPHER D.
HUGHES, TRUSTEE'S ATTORNEY(S)
7-9-14 [[63](#)]

28. [14-25816](#)-D-11 DEEPAL WANNAKUWATTE CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-30-14 [[1](#)]

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

29. [14-25816](#)-D-11 DEEPAL WANNAKUWATTE MOTION TO EMPLOY J. RUSSELL
DNL-1 CUNNINGHAM AS ATTORNEY(S)
7-8-14 [[67](#)]
30. [14-25816](#)-D-11 DEEPAL WANNAKUWATTE MOTION TO APPROVE FORM AND
DNL-3 MANNER OF NOTICE BY PUBLICATION
OF CLAIMS BAR DATE
7-16-14 [[81](#)]

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

31. [14-25816](#)-D-11 DEEPAL WANNAKUWATTE MOTION TO APPROVE JOINT
DNL-4 INVESTIGATION AGREEMENT
7-16-14 [[86](#)]

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

32. [14-25820](#)-D-11 INTERNATIONAL CONTINUED STATUS CONFERENCE RE:
MANUFACTURING GROUP, INC. VOLUNTARY PETITION
5-30-14 [[1](#)]

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

33. [14-25820](#)-D-11 INTERNATIONAL MOTION FOR ORDER AUTHORIZING
FWP-8 MANUFACTURING GROUP, INC. FORM AND MANNER OF PUBLICATION
NOTICE OF BAR DATE
7-16-14 [[114](#)]

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

34. [14-26423](#)-D-7 MICHAEL WIEST ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-14 [[23](#)]

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.

35. [14-24247](#)-D-7 ROSA ESTRADA MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
7-11-14 [[21](#)]

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION VS.

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 indicates she intends to surrender the collateral and the trustee has filed a Report of No Assets. 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.

36. [14-25148](#)-D-12 HENRY TOSTA MOTION TO USE CASH COLLATERAL
MF-11 7-3-14 [[120](#)]

37. [14-25148](#)-D-12 HENRY TOSTA CONTINUED MOTION TO EMPLOY
MF-7 BAUDLER & FLANDERS AS
ACCOUNTANT(S)
6-20-14 [[85](#)]
38. [14-25148](#)-D-12 HENRY TOSTA CONTINUED MOTION TO EMPLOY
MF-8 RESIDENTIAL GROUP REAL ESTATE
AND LENDING AS BROKER(S)
6-20-14 [[90](#)]
39. [14-25150](#)-D-12 HENRY TOSTA, JR. FAMILY, MOTION TO USE CASH COLLATERAL
MF-11 L.P. 7-3-14 [[119](#)]
40. [14-25150](#)-D-12 HENRY TOSTA, JR. FAMILY, CONTINUED MOTION TO EMPLOY
MF-7 L.P. BAUDLER & FLANDERS AS
ACCOUNTANT(S)
6-20-14 [[85](#)]

41. [14-25150](#)-D-12 HENRY TOSTA, JR. FAMILY, CONTINUED MOTION TO EMPLOY
MF-8 L.P. RESIDENTIAL GROUP REAL ESTATE &
LENDING AS BROKER(S)
6-20-14 [[90](#)]
42. [14-24484](#)-D-7 MATTHEW/CHARLENE HEIL MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
VENTURES TRUST 2013-I VS. 7-11-14 [[17](#)]
43. [14-25820](#)-D-11 INTERNATIONAL CONTINUED MOTION FOR ORDER
FWP-3 MANUFACTURING GROUP, INC. ESTABLISHING NOTICE AND
ADMINISTRATIVE PROCEDURES
7-2-14 [[64](#)]

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