UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 21, 2013 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.	13-25003-D-7 MBS-1	BETTY WILLIAMS	MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A. 7-22-13 [17]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by FIA Card Services, N.A. ("FIA"). The motion will be denied because the moving party failed to serve FIA in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served FIA only through the attorneys who obtained FIA's abstract of judgment, and failed to serve FIA, which according to the FDIC, is an FDIC-insured institution, by certified mail to the attention of an officer, as required by Rule 7004(h).

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

2.	10-45605-D-7 DMW-2	HORSESHOE CANYON LODGING, INC.	MOTION TO EMPLOY ZEZOFF, YUEN & CO. AS ACCOUNTANT(S) 7-16-13 [168]

Final ruling:

This is the trustee's motion to employ an accountant. The motion will be denied for the following reasons. First, the notice of hearing gives the date for the filing of a written response as October 31, 2012, and the date of the hearing as November 14, 2012. An amended notice of hearing does not contain those dates; instead, it refers to a written response being due "on or before the date stated above," but there is no date stated above or anywhere, and the amended notice does not state that opposition must be filed at least 14 days before the hearing date. In other words, the date by which opposition must be filed cannot be determined from the amended notice.

Second, the moving party served the notice of hearing and amended notice of hearing only, and failed to serve the motion and supporting declaration on the United States Trustee, as required by Fed. R. Bankr. P. 2014(a).

As a result of these service and notice defects, the motion will be denied. However, because the trustee does not seek to compensate the accountant at this time, and the accountant's declaration makes clear he intends to apply for fees at a later time, the trustee need not file another noticed motion. Instead, the trustee may simply file an application with a copy of the accountant's declaration and a proof of service evidencing service of both documents on the United States Trustee's office. Assuming no opposition by the United States Trustee, the court will consider and rule on the application.

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

3.	13-28508-D-7 JBC-1 HING HUI VS.	SANDRA SWANSON	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-13 [29]

4.	13-29309-D-7	AUDREY BAILEY	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 7-14-13 [5]

5. 12-39220-D-7 FRANCISCO IBARRA
MRG-1
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-17-13 [25]

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 March 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.

6. 13-29520-D-7 SAMUEL/PENNY GIBSON
NBC-1

MOTION TO COMPEL ABANDONMENT
7-22-13 [5]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have 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 by minute order. No appearance is necessary.

7. 13-28422-D-7 ROBERT FERRIER
JHW-1
STATE EMPLOYEES CREDIT UNION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-11-13 [21]

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.

8. 12-26425-D-11 DALE/BRENDA APODACA
UST-1

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-11-13 [125]

9. 13-27725-D-7 KRISTIAN HARTMAN — CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
WAC-1 — 7-9-13 [41]

Tentative ruling:

This is the debtor's motion to convert this case from chapter 7 to chapter 13. The chapter 7 trustee filed opposition, and the hearing was continued to allow for additional briefing. The debtor has filed a reply to the trustee's opposition, and the trustee has filed a reply. For the following reasons, the motion will be denied.

The court will begin with the debtor's original Schedules I and J filed in this case, which listed his income at $400 per month and his living expenses at $3,090 per month. Based on those figures, the debtor clearly did not have regular income sufficient to fund a chapter 13 plan. The form of Schedule I specifically required the debtor to describe any increase or decrease in income reasonably anticipated to occur within the next year. His complete answer to that question was this: "All Debtor's basic expenses are being covered by his parents while he recovers from both the economy [sic] depression in contractor work and disability and related surgery." Debtor's Schedule I, filed June 19, 2013, answer to question 17. Just 11 days later, however, the debtor started work as a foreman for Double Down Electric, making $5,120 per month gross, $3,920 net. In his declaration in reply to the trustee's opposition, the debtor adds that the rotator cuff injury he suffered in 2011 has healed, that work has become available again in his field, and that he had the new job waiting for him for several months, but until last month, was unable to raise his hand above his head sufficiently to do electrical work. All of this information was clearly called for by the question on Schedule I requiring disclosure of income changes expected to occur in the next year, yet the debtor did not provide it on that schedule or at any time before filing this motion to convert the case or until two weeks later – after the trustee had filed his opposition to the motion to convert.[1]

The debtor blames inaccuracies in his original schedules filed in this case on his former attorney. He states he provided the information for the schedules "more than 17 months ago in February 2011."[2] Declaration of Kristian Hartman, filed August 2, 2013 ("Decl."), at 2:1. He adds the following:

> **Mr. Knight [the debtor's attorney] did not contact me to update the property valuations in the schedules prior to the filing of my voluntary petition on June 5, 2013 and he did not provide me with a copy of the schedules that were filed. Mr. Knight sent me a form to verify these schedules months ago and I did sign the form, although I had not seen the schedules.**

Id. at 2:1-5. That the debtor signed a form purporting to verify the information in his bankruptcy schedules without seeing those schedules is a strong indication that he did not comply in good faith with his duty of careful, complete, and accurate reporting in his schedules. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007). To the extent, if any, the debtor contends his attorney did not inform him of this duty, the argument is easily refuted. First, the debtor, in the exercise of even ordinary care, should have known that

information provided 17 months earlier might need to be updated. Second, the court and creditors are entitled to expect any debtor to know that "verifying" information implies that the information is truthful, which in turn, implies that the person verifying it has reviewed it. Anyone with any degree of experience in the real world – and certainly someone who owns three real properties – must know that a verification of documents one has not seen is worthless.

The next problem with the debtor's schedules is that his original Schedule A listed the values of his three real properties at $78,000, $74,000, and $74,000, respectively, whereas the amended Schedule A filed a month later – after the trustee had determined that the true values were much higher – lists the values at $102,000, $163,000, and $135,000, respectively. Again, the debtor would shift the blame to his former attorney, stating that the values on the original schedule are those he provided his attorney 17 months ago, and that "[s]ince property values in the Sacramento area have dramatically increased over the past year, this meant that the properties were undervalued in my schedules." Decl. at 2:5-6. As with the debtor's Schedules I and J, he did not amend his Schedule A to disclose these revised values at the time his motion to convert was filed – indeed, he made no reference to inaccurate schedules at all. The court cannot conclude that a debtor who provides information to his attorney 17 months before his case is filed and then takes no action to update that information until after the trustee challenges his scheduled values has complied in good faith with his duty to provide truthful and complete schedules.

Next, there is a serious discrepancy between the debtor's original and amended Schedules F, and he has failed to sufficiently explain it. The original Schedule F listed debts totaling $365,580, all of them listed as non-contingent, liquidated, and undisputed, whereas the total on the amended Schedule F is just $61,711. The debtor has provided this partial explanation:

> The schedules filed by my original bankruptcy attorney also incorrectly stated my total amount of unsecured debt, in part because they listed as undisputed an approximately $72,000 charge listed on my Bank of America mortgage statements for the property located at 5101 Cabrillo Way in error. This charge has been removed from mortgage statements by Green Tree loan servicing and it has been removed from my mortgage statements since it was never owed.

Decl. at 2:25-3:1. The problem with this explanation is that it addresses only $72,000 of the $303,869 discrepancy between the original and amended schedules, leaving $231,869 unexplained. Presumably, the original figures were figures provided by the debtor to his attorney in February of 2012. The debtor has not denied their accuracy, except as to the $72,000, yet he has offered no explanation as to what became of the remaining $231,869 in debts he apparently owed less than two years ago. Certainly, his income, as disclosed on his amended Statement of Financial Affairs, has been insufficient to allow him to pay off debts of that magnitude. He estimates his total gross income from all sources (his rental properties, contracting jobs, and odd jobs) at $6,000 in 2012 (for the year, not monthly) and $2,906 in 2011 (also for the year, not monthly)).

Finally, the debtor's amended Schedule B disclosed as assets the following, which had not been disclosed on his original Schedule B: "Shares in Ed Mark, Inc. (company dissolved in 2010)," value $0; "Breach of contract and fraud claim against Analytic Approach and Sean Pickering," value $0; and construction tools valued at $3,000. Additionally, on his original Statement of Financial Affairs, where

required to list all transfers of property within the two years prior to the bankruptcy filing other than in the ordinary course of business, the debtor answered "None," whereas on his amended Statement of Financial Affairs, he listed the following "[To] Zyler Hartman, 02/2012, 5111 Cabrillo Way, Sacramento, CA 95820 (transferred by mistake on incorrect advice, subsequently reversed)." The debtor has offered no explanation for the omission of these assets and this transfer on his original Schedule B and Statement of Financial Affairs. And as explained below, because the debtor failed to attend the meeting of creditors in this case, the trustee has had no opportunity to explore these issues.

Perhaps most significant, the debtor has not even suggested that any of the new information provided on the amended schedules and amended Statement of Financial Affairs would ever have come to light if the trustee had not independently discovered the actual values of the debtor's three real properties.

The debtor's reply to the trustee's opposition states that he does not consent to the resolution of disputed material facts on affidavits. As required by local rule, he has filed a separate statement listing the following disputed factual issues he would like to have resolved following an evidentiary hearing:

	Trustee's position	Debtor's position
1.	Contends debtor misrepresented property values in his schedules.	Contends the property valuations in his schedules were accurate as of Feb. 2011, and were not updated due to attorney oversight.
2.	Contends debtor owes more than $177,000 [3] to unsecured creditors.	Contends debtor owes $61,711 to unsecured creditors.
3.	Contends debtor will be unable to fund a plan because he lacks a regular income.	Contends debtor will be able to fund a plan to pay unsecured creditors in full, since he recently accepted a position as foreman at Double Down Electric.

The court does not need an evidentiary hearing to determine the merits of this motion. The court has determined above that the debtor's failure to provide updated information to his attorney, together with the debtor's verification of schedules he had not seen, operates to place the fault for the inaccurate schedules squarely on the debtor. Further, the court does not need an evidentiary hearing to assess the debtor's failure to explain a discrepancy of $231,869 between the debts he listed for his attorney 17 months before the filing and those he now claims are due. And given that discrepancy, together with the debtor's income history, as disclosed on his amended Statement of Financial Affairs, the court has no confidence the debtor can fund a plan to pay unsecured creditors in full, or even in an amount sufficient to satisfy the liquidation test.

The court notes that neither the debtor, his then attorney, nor his new attorney attended the meeting of creditors in this case. Instead, the debtor filed this motion the day before the meeting. The trustee has testified to the e-mail message he sent the debtor's new attorney the night before the meeting stating that he expected the debtor to appear, and that if he did not, the trustee would request a continuance of the hearing on the debtor's motion to convert. The debtor has offered no explanation for his failure to attend the meeting.

The debtor correctly states that the Marrama decision, which recognized that a debtor does not have an absolute right to convert a chapter 7 case to chapter 13, expressly did not "articulate with precision what conduct qualifies as 'bad faith'" sufficient to permit a judge to deny a motion to convert. Marrama v. Citizens Bank, 549 U.S. 365, 375 n.11 (2007). However, the Court in that case did conclude that "the courts in this case correctly held that Marrama forfeited his right to proceed under Chapter 13." Id. at 371. The facts in this case are sufficiently similar to those in Marrama (where the debtor made misleading or inaccurate statements in his schedules about the value of his house and about his transfer of the house into a trust, which he later attempted to explain as a "scrivener's error," and failed to disclose his right to an $8,745 tax refund) that the court has no trouble concluding that by his conduct in connection with his schedules and statements filed in this case, the debtor has forfeited his right to have the case converted to chapter 13.

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

---

1 The only information about his income the debtor provided with his motion to convert the case was this: "I have a regular income since I accepted a job with a general contractor on or around July 1, 2013." Declaration of Kristian Hartman, filed July 9, 2013, at 1:27-28.

2 Apparently, the debtor means February of 2012.

3 The debtor has misunderstood the trustee's opposition on this point, which was that there is equity in the debtor's three real properties of between $77,000 and $177,000, and thus, that the debtor might have to pay up to $177,000 in order to meet the liquidation test.

10. 13-26729-D-7 RONALD/APRIL SWIHART — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBB-1 — 7-24-13 [19]
GREEN PLANET SERVICING, LLC
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. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they 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.

11. 13-25432-D-7 RUSSEL OCAMPO
NLG-1
FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-19-13 [17]

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 August 6, 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.

12. 12-35535-D-7 EDWARD/SHERRY KAUFMAN
PD-2
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-13 [50]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on December 14, 2012 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

13. 12-37335-D-11 ISMAEL/MARIA GUILLEN
UST-1

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-25-13 [100]

14. 13-29346-D-7 RYAN/LORENA O'MALLEY

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-15-13 [5]

15. 13-25947-D-7 HSM-1 — KIETH/DAGNY MERRILL — MOTION TO EMPLOY HEFNER, STARK & MAROIS, LLP AS ATTORNEY(S) 7-22-13 [14]

16. 10-42050-D-7 CDH-11 — VINCENT/MALANIE SINGH - BARRED - 06/29/11 — MOTION FOR CONTEMPT 7-24-13 [418]

Tentative ruling:

This is the trustee's motion for an order of contempt against the debtor in this case, Vincent Singh, and against attorney David Dudley personally for failure to respond to subpoenas requiring the production of documents. The specific relief requested is that Singh and Dudley be held in contempt and that the court enter an order requiring the production of documents on or before August 28, 2013. Notice of the motion was given pursuant to LBR 9014-1(f)(1). The motion was properly served on respondent Dudley. As to respondent Singh, the proof of service evidences service at his address of record in this case, whereas the address on the subpoena is in care of the Sacramento County Jail, and the motion indicates Singh is still in that jail. Assuming the trustee establishes that service on Singh at his address of record, rather than at the county jail, was proper, the court is prepared to grant the motion as to Singh. In any event, the court will grant the motion as to Dudley. As of this date, neither Singh nor Dudley has filed written opposition to the motion.

The trustee's evidence reveals the following. Since February 27, 2013, the trustee has been attempting to obtain copies of all documents (excluding witness statements, witness interviews, and notes of witness statements and interviews) received from or provided to the U.S. Attorney's office in connection with the government's pending criminal case against Singh. The trustee began his quest by asking Dudley, who represents Singh in the criminal matter, to accept service of a subpoena on behalf of Singh. The trustee's opening e-mail to Dudley made clear that the trustee was seeking all documents in the criminal case except the witness statements, witness interviews, and notes of the same.

On March 6, 2013, Dudley responded that he "[would] accept the subpoena on Mr. Singh's behalf as long as we can work out a new subpoena compliance date without me waiving any specific objections I might have to certain aspects of the subpoena after reviewing it thoroughly." Trustee's Ex. 1, at 9. Dudley expressly acknowledged having received "the discovery discs in the criminal case" (id.), but stated he had looked at only a small portion of them and would be out of state and out of the country for most of March. On March 7, the trustee's attorney replied by stating he would like the bank documents "sooner rather than later" (id. at 8), but if those could be produced in the next few days, he would agree to extend the deadline for the other documents until after Dudley's return in April. Dudley responded immediately, stating that he assumed the bank records were on one of the

discovery discs he had received, but he would "have no access" (id.) to them until after his return to his office the week of March 25. He concluded, "I do not see how I can produce those records . . . until I return to L.A. and even then it may take me a week to do so, given the backlog of work I anticipate to be facing upon my return." Id.

The week of March 25 came and went, and on April 3 and April 9, the trustee's attorney e-mailed Dudley for a response. On April 11, Dudley responded that he had returned from his vacation to "a tremendous backlog" of work, that he had not further reviewed the Singh documents since his return, and that he was "hopeful that [he would] have the time to resume such review before the end of the month." On April 24, in response to more follow-up e-mails from the trustee's counsel, Dudley stated he could not "provide a target date for production due to the extraordinary backlog of work" (id. at 5) he still faced, but that he hoped to be able to thoroughly review the discovery by early May, and then to be able to accept service of the subpoena. He acknowledged that "in early April, I was almost certain that such review would have been completed by now . . . ." Id.

In response to the April 24 e-mail, the trustee's attorney decided to serve subpoenas on Singh and Dudley, and asked Dudley for a date, time, and location at which he could be served. Dudley responded that he was not authorized to accept service of a subpoena on behalf of Singh. The trustee's attorney wrote back that he would be serving a subpoena directed to Dudley, and was not requesting that Dudley accept service for Singh. The trustee's process server then attempted unsuccessfully to serve Dudley at his Los Angeles office five different times between April 30 and May 15. The trustee's attorney finally succeeded in serving him at the federal courthouse in Sacramento on May 16, at which time Dudley told the trustee's attorney he would produce the documents, but would need more time beyond the deadline in the subpoena, May 24.

By June 24, no documents had been produced and the trustee's attorney had heard nothing from Dudley. That day, he e-mailed Dudley, offering as an accommodation to limit the scope of the production to financial documents, including financial institution account statements, checks, transfers, payments, deposits, and withdrawals, received from the U.S. Attorney's office in connection with the criminal case. The trustee's attorney mentioned the possibility of a motion to compel compliance with the subpoena if the documents were not produced. Again hearing nothing, the trustee's attorney sent a follow-up request on July 3. Finally, on July 8, Dudley responded with a lengthy e-mail that convinces the court Dudley will not comply with the subpoena without, at the very least, a court order compelling production, and that any further attempt by the trustee's counsel to meet and confer with Dudley would be futile. The following points made by Dudley persuade the court that he has not at any time during the past several months taken seriously either the trustee's attorney's subpoena or his earlier attempts to get the documents informally.

> • Let me preface my remarks by noting that you and I apparently have very different law practices in at least two ways. First, my practice is limited to criminal defense work and some civil matters. In my line of work, when you are in trial or preparing extensive briefs, it is quite common to delay responding to e-mails or telephone calls until after those trials or briefs have concluded. In my field, most prosecutors and defense attorneys implicitly understand that, absent a dire emergency, you will respond to their communications in [sic] as soon as you can.

• Second, I do 99% of all work myself, from copying documents to trying federal cases. I have no secretary. I have no paralegal. I have no law clerks. I have no interns. I have no receptionist. I have no answering service. I do have one part-time assistant who works for me, from her home, an average of two hours per week. Because of the limitations of my practice, compliance even with the slightly narrowed ambit of your subpoena will be extraordinarily burdensome. That being said, I have, at this juncture, reviewed approximately 20% of the discovery provided to me by the government and prior counsel. So far, I have seen no documents responsive to your subpoena. Nevertheless, there does appear to be some financial records on a disc that contains most of the discovery in the criminal case and you appear to have some knowledge, perhaps obtained from the United States Attorney's Office, that the materials you are looking for will be found on that disc.

• Why can you not obtain those documents yourself from the relevant financial institutions, whichever ones they may be, as they [have] vastly greater resources than I do? If that is not a viable approach for you, can you help me pay someone to spend the hours necessary to find the specific records you are looking for and figure out how to copy them off the discovery disc and on to another one (I am not sure I know how to do that)?

• Most important, I need to know what type of time framework you are requesting for compliance. Presently, I will not have access to the discovery disc again until the week of July 22, 2013, as I will not return to my office until that date. Once I do return, finding what you want and copying it could take me a considerable amount of time given my client commitments. I could file a motion to stay the bankruptcy proceedings due to the burden the subpoena compliance would place on my ability to represent my client in the criminal matter but that motion itself would take up much valuable time and I would prefer to reach some sort of agreement as to records you are requesting.

Trustee's Ex. 1, at 2.

The court finds this response troubling. First, the rule regarding subpoenas contains no exception for attorneys in criminal practice or for solo attorneys. Second, the announcement that the 20% of the documents Dudley has reviewed thus far are not responsive to the subpoena is disconcerting. The subpoena calls for <u>all documents received from or provided to the U.S. Attorney's office</u> except witness statements, witness interviews, and notes regarding them. It is difficult to believe that the particular 20% of the documents Dudley has reviewed consist solely of witness statements, witness interviews, and notes regarding them. Except for documents falling within that very precise definition, every single one of the documents Dudley has reviewed are within the scope of the subpoena and must be produced. Any attempt by Dudley to limit the scope of the production himself by guessing at what documents the trustee wants or deciding what documents the trustee should get is improper. Finally, Dudley's request that the trustee's attorney provide a time frame for compliance, when he has done so again and again, is disingenuous at best.

Finally, the court must mention Dudley's "formal response in compliance with your subpoena" (Trustee's Ex. 6, at 1) – a letter from Dudley to the trustee's attorney dated July 16, 2013.

The government has provided Mr. Singh's defense with what appears to be several thousand pages of discovery, most of which was presented in the form of a computer disc. Thus far, I have reviewed approximately 938 pages of that discovery. None of the 938 pages would be responsive to your subpoena. I am continuing to review the extensive discovery that the government has provided. I hope to have that review completed by late September. As soon as I find any financial records or other documents responsive to your subpoena, I will e-mail or telephone you immediately to determine how you want me to copy and then forward such materials to you. Of course, in making this statement, I do not waive any legal objections which my client may have to the disclosure of particular documents.

Id. To the contrary, Dudley has waived all objections by failing to raise them in writing within the time frame designated in Fed. R. Civ. P. 45(c)(2)(B) and by failing to describe the withheld documents in the manner required by Rule 45(d)(2)(A). (All rule references are to Fed. R. Civ. P. 45, incorporated herein by Fed. R. Bankr. P. 9016.) Dudley will be ordered to produce all documents received from or provided to the U.S. Attorney's office in connection with the criminal case, except witness statements, witness interviews, and notes of witness statements and interviews. The production will not be limited to financial records. The trustee's attorney will not be required to inform Dudley how he wants the documents copied and forwarded. Instead, pursuant to Rule 45(d)(1)(B), Dudley will produce them in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.

In conclusion, the court finds that Dudley, having been served, has failed without adequate excuse to obey the subpoena, and in accordance with Rule 45(e), he will be ordered to produce the documents described above to the trustee's counsel no later than August 28, 2013. In the event all the documents have not been produced by that date, the court intends to assess monetary sanctions to be imposed daily until all such documents have been produced. The trustee having expressly stated he is not requesting an award of attorney's fees and costs at this time, the court will award none.

The court will hear the matter.

17. 13-25854-D-7 ARRINGTON STURDIVANT — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 7-12-13 [31]
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

Final ruling:

This matter is resolved without oral argument. This is Federal National Mortgage Association's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The Movant asserts, and it is not disputed, that it acquired ownership to the real property that is the subject of this motion at a pre-petition foreclosure sale. Movant further asserts that as a result of this pre-petition foreclosure sale the debtor has only have a possessory interest in the property. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d)(1) and to waive FRBP 4001(a)(3). The court will grant relief from stay and waive rule FRBP 4001(a)(3) by minute order with no further relief afforded. No appearance is necessary.

18. 13-23455-D-7 LEILA/LUCITO VILLANUEVA
RCO-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-13 [14]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on June 14, 2013 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

19. 13-28056-D-7 KIM TURNER
MBB-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-13 [13]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'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.

20. 09-29162-D-11 SK FOODS, L.P.
10-2014 SH-16
SHARP ET AL V. SALYER ET AL

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT AND/OR MOTION FOR SUMMARY JUDGMENT
4-10-13 [647]

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

21. 13-29366-D-7 JOSEPH ZYBACH

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-15-13 [6]

22. 13-20670-D-7 JACKI BERCIER
EJS-1

Final ruling:

MOTION TO AVOID LIEN OF PLACER CREDITORS BUREAU, ARROW FINANCIAL SERVICES, LLC, BENEFICIAL CALIFORNIA, INC. AND DISCOVER BANK
7-10-13 [24]

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

23. 11-40980-D-7 MONTE/DONNA SMITH
CAH-23

MOTION FOR COMPENSATION FOR C. ANTHONY HUGHES, DEBTOR'S ATTORNEY(S), FEE: $36,975.00, EXPENSES: $0.00.
7-15-13 [343]

24. 13-27680-D-7 TRACY JACOBS
TRM-105
BMW BANK OF NORTH AMERICA
VS.

Final ruling:

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
7-23-13 [17]

This matter is resolved without oral argument. This is BMW Bank of North America'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.

25. 11-39881-D-7 WILLARD/NIKI ATKIN
DNL-5

Final ruling:

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S), FEE: $20,266.50, EXPENSES: $250.95
7-19-13 [92]

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

26. 13-26885-D-7 TIFFANY HER
RCO-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
7-15-13 [19]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'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.

27. 12-40590-D-7 ANIL/RANJANI PRASAD
SLF-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF THE SUNTAG LAW FIRM FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S), FEE: $8,321.11, EXPENSES: $0.00.
7-24-13 [59]

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.

28. 13-27091-D-7 RACHEL RIVERS-KIDD
ASW-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-17-13 [14]

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.

29. 13-21595-D-7 PATRICIA CUNNINGHAM
JT-5

CONTINUED MOTION FOR SUBSTITUTION OF DECEASED PARTY
6-18-13 [46]

Tentative ruling:

This is the motion of the debtor's daughter, Amy Sparks ("Sparks"), to substitute herself for the debtor, who died in March of this year, about a month after her petition commencing this case was filed. The trustee opposed the motion, Sparks filed a reply, and the hearing was continued to allow Sparks to file supplemental evidence, which she has now done. Having reviewed Sparks' declarations filed July 30, 2013 and August 12, 2013, together with the exhibits filed with them, the court concludes that Sparks has established that she is the debtor's successor in interest for purposes of this case. Therefore, the motion will be granted, and Sparks will be substituted into the case in place of the debtor. For the sake of completeness, except as modified by this ruling, the court hereby adopts, as though fully set forth herein, its ruling for the July 31, 2013 hearing, set forth in the civil minutes of this case at DN 74.

The court will hear the matter.

30. 13-21595-D-7 PATRICIA CUNNINGHAM
PA-4

MOTION TO SELL
7-24-13 [65]

31. 10-42713-D-12 AMRIK DHALIWAL

ORDER TO SHOW CAUSE
7-29-13 [54]

32. 13-28913-D-12 ALLA YERMOLOVA

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
7-2-13 [1]

33. 13-27614-D-7 KENNETH/CARMEN WILLIAMSON
ND-1
PROVIDENT FUNDING ASSOCIATES, LP VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-30-13 [13]

34. 13-29837-D-7 JANET HERNANDEZ

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-5-13 [10]

35. 09-29162-D-11 SK FOODS, L.P.
SH-225

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALHAMBRA AND SIERRA SPRINGS
8-7-13 [4413]

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

36. 13-22965-D-7 VERNIE JOHNSON

AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-1-13 [46]

Final ruling:

This case was dismissed on June 4, 2013. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

37. 13-25869-D-7 NISHELLE FEWELL
JRR-1

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-11-13 [20]

38. 11-47176-D-7 NICK/KIMBERLY DUGGINS — MOTION TO EMPLOY ROBERT L. MEISSNER AS SPECIAL COUNSEL
DNL-2 — 7-29-13 [34]

39. 10-30583-D-7 STEVEN LONG — CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2057 — 6-12-13 [31]
DIDRIKSEN V. DAVIS ET AL

40. 13-28288-D-11 MICHAEL MATRACIA — MOTION TO EMPLOY DANIEL J. HANECAK AS ATTORNEY(S)
DJH-1 — 8-7-13 [14]

Tentative ruling:

This is the debtor's motion to employ Daniel J. Hanecak ("Counsel") as his counsel in this chapter 11 case, apparently in exchange for a flat fee of $10,000 for post-petition services. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, for the following reasons, the motion will be denied.

First, there are the following service defects: (1) the moving party failed to serve the IRS and the Franchise Tax Board at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1 (and those creditors have not been notified of the case at those addresses, as required by the same rule); (2) the moving party failed to serve the party filing Claim No. 3 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g)(1); and (3) the moving party failed to serve Chase Home Finance, which has not filed a proof of claim in this case, at the address listed on the debtor's Schedule D, as required by Fed. R. Bankr. P. 2002(g)(2).

Second, Counsel's disclosure of his connections with the debtor, as required by Fed. R. Bankr. P. 2014(a), is incomplete. Counsel states in his declaration:

The firm has no connection with [the debtor], his creditors, or any party

in interest herein, their respective attorneys or accounts [sic], the United States trustee, or any person employed in the office of the United States trustee, except that the firm represents the debtor in this proceeding.

Declaration of Daniel J. Hanecak, filed August 7, 2013, at 2:1-4. In contrast, Counsel's fee agreement with the debtor, filed as an exhibit, reveals that Counsel represented the debtor pre-petition, for which Counsel charged and the debtor paid fees of $10,000 for services described as "consultation, analysis, strategy formulation, strategic preparation such as negotiations and claims dispute workups, and document preparation." (Chapter 11 Bankruptcy Attorney-Client Fee Agreement, Debtor's Ex. A ("Agreement"), at ¶ 2.) This prior connection of Counsel with the debtor – both the representation and the payment – should have been disclosed in Counsel's declaration.

Third, the proposed terms of Counsel's compensation are not clear. The arrangement for post-petition services appears to be some sort of hybrid of a fixed fee and a lodestar arrangement. The motion states that Counsel will receive a fee of $10,000, but also that Counsel may file periodic applications seeking "interim allowances of fees and costs incurred to the date of such" applications. Application to Approve Employment of Attorney, at 3:11-12 (emphasis added). The motion also says Counsel may receive a premium at the end of the case if warranted, but does not indicate whether the premium would be determined by hours billed above the $10,000 fixed fee or otherwise. The parties' fee agreement also refers to a post-petition fee of $10,000, to be paid in increments of $5,000 upon court approval, but also refers to billing for attorney's fees on a lodestar basis (hours spent times hourly rate), and to monthly statements showing fees and costs incurred and the "current balance owed." Agreement at ¶ 5.

Because of these discrepancies, the court cannot tell what will trigger Counsel's duty to file fee applications, on what basis the court will be asked to approve such fees (reasonableness based on time spent and hourly rate? if not, on what basis?), when Counsel's compensation will be considered to have been earned,[1] whether the debtor will be responsible to pay any portion of the fee if the case is dismissed or converted before Counsel has filed a fee application,[2] and so on. In addition, the motion refers to the possibility of a premium above the flat fee, whereas the fee agreement (which states that it contains all the terms of the parties' agreement) states that post-petition attorney's fees "will be a flat fee of $10,000.00, with no additional hourly fees . . . " (Agreement, at ¶ 3). In short, the various documents make it impossible to determine what the actual terms of Counsel's compensation will be.

In addition, the statement in the fee agreement that the $10,000 pre-petition payment is not refundable is not appropriate. Pursuant to § 329(a) and (b) of the Bankruptcy Code, Counsel will be required to demonstrate to the court that those fees represented the reasonable value of the services performed. (Section 329(a) expressly requires disclosure of all compensation paid during the year prior to the filing; pursuant to § 329(b), the court may order the return of such compensation to the extent it exceeds the reasonable value of the services performed.)

Fourth, the court will not approve the provisions in the fee agreement whereby the debtor "waive[s] any potential conflicts of interest" (Agreement at ¶ 11) and under which Counsel may represent any existing or future client with respect to a claim adverse to the debtor, so long as in the course of representing the debtor, Counsel has not obtained information that would be adverse to the debtor's interests

with respect to that claim (¶ 8). Those provisions conflict directly with the fundamental bankruptcy requirements that Counsel not hold or represent an interest adverse to the estate, and that he at all times be a disinterested person (§ 327(a)). Whether or not the court approves Counsel's employment in this case on a later motion, the court explicitly disapproves those provisions.

Next, Counsel's Rule 2016(b) statement, filed with the petition, improperly purports to limit the scope of Counsel's services to be performed in this case to exclude "representation of the debtors [sic] in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding." DN 1, at 40.[3] Pursuant to LBR 2017-1(a)(1), Counsel may properly exclude adversary proceedings from the scope of his representation of the debtor; the other purported exclusions are, pursuant to the rule, expressly within the scope of such representation.

Finally, the court does not have any evidence about Counsel's bankruptcy experience, especially his chapter 11 experience.

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

_____

1 The fee agreement states in one place that Counsel expects to apply for court approval of $5,000 in four to five months and the other $5,000 in six to ten months, and that the debtor agrees to make payments "promptly upon Court approval" (Agreement at ¶ 3), but in another place that "[a]ttorney fees will be billed upon Court approval as your attorney" (id.) (presumably, court approval of Counsel's employment).

2 The fee agreement says "[w]hen all services are concluded, all unpaid charges will immediately become due and payable." Agreement, at ¶ 6.

3 The Rule 2016(b) statement also conflicts with the motion and the parties' fee agreement in that neither of the latter purports to exclude anything except adversary proceedings. Thus, the court cannot determine whether the debtor was informed of the purported exclusions listed in the Rule 2016(b) statement.

41. 13-28288-D-11 DJH-2 — MICHAEL MATRACIA — MOTION TO VALUE COLLATERAL OF CHASE HOME FINANCE, LLC 8-7-13 [19]

Tentative ruling:

This is the debtor's motion to value collateral of Chase Home Finance, LLC, consisting of a first position deed of trust against the debtor's real property in Orangevale, California, at $140,000. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, for the following reasons, the motion will be denied.

First, the debtor asserts that the property is a rental property, and not the debtor's residence. However, the evidence in support of that conclusion conflicts with the evidence of the debtor's schedules and Statement of Financial Affairs in this case. The debtor states in his declaration supporting the motion that the property is a rental and is not his principal residence. However, he has listed no

unexpired leases on his Schedule G. Further, although he lists rental income of $1,800 per month on his Schedule I, his Statement of Financial Affairs lists no rental income in the past two years. (It may be that he has included rental income in the totals of his income, as disclosed in answer to question 1. However, it is the debtor's responsibility to make an adequate record; here, he has not done so.)

Second, the debtor has failed to satisfy his burden of demonstrating that the value of the property is $140,000. The sole evidence on this point is the declaration of the debtor, who is and for the past seven years has been a landscape contractor. He is not a real estate appraiser, broker, or agent, and except as discussed below, he does not allege he has any particular experience or education in the field of real estate. An owner of property may testify to his or her opinion of the value of that property, with limitations:

> If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

The debtor bases his qualifications to render an opinion of value on his status as a homeowner and landlord, and his active engagement in the management of his home and rental properties,[1] including "keeping informed and up to date on all market conditions that affect [his] home and rental, including typical actual market property values of properties similar to [his] own, as well as typical rental market rates." Debtor's declaration, filed August 7, 2013 ("Decl."), at 2:3-5. He also attests to his "substantial presence in and familiarity with the Citrus Heights and Orangevale, California areas and their single family real estate market and rental income real estate market." Id. at 2:7-9. He claims to be "familiar with the listings and sales in the market area of properties similar to this Property." Id. at 2:9-10.

The court concludes that the debtor's ownership of one single-family residence, even as a landlord, with no experience as an appraiser, broker, or real estate agent, and with no education in the field, does not qualify him as an expert under the Federal Rules of Evidence. However, even if he were qualified as an expert witness, his testimony is based on a RealtyTrac Real Estate printout and four printouts from zillow.com, all of which are inadmissible hearsay. Fed. R. Evid. 802.

Finally, even if the debtor were qualified as an expert witness, the debtor's testimony is unpersuasive because the starting point for his valuation is a "median foreclosure sale price" for the property, as derived from something called a "Real Estate Statistics and Foreclosure Trends Summary" from RealtyTrac Real Estate and

four printouts from zillow.com for four different properties, three of which are foreclosed properties, whereas the debtor has submitted no authority that a foreclosure sale value is the appropriate standard for valuation under § 506(a) of the Bankruptcy Code for property the debtor intends to retain.[2] According to the debtor's printouts, Zillow values the four properties at $189,416, $109,573, $190,250, and $185,000. In contrast, and in contrast to the debtor's valuation of the property at $140,000, the court notes that Zillow values the property that is the subject of this motion at $345,266. This wide discrepancy illustrates the significance of utilizing the appropriate valuation standard. The debtor has failed to demonstrate that his valuation standard is the correct one.[3]

The court concludes the debtor has failed to carry his burden to demonstrate the property is a rental property, and thus, that he is entitled to "strip down" the value of the secured claim, and has also failed to carry his burden of demonstrating that the value of the property is less than the amount owed. For these reasons, the motion will be denied by minute order. No appearance is necessary.

---

1 However, according to the debtor's Schedule A, he owns only a single real property – the one that is the subject of this motion.

2 The court is to consider the proposed disposition and use of the property, and also the purpose of the valuation (§ 506(a)), whereas the moving papers are unclear on this latter point. The motion states it is made is for purposes of plan confirmation (Motion filed August 7, 2013, at 2:21), whereas the memorandum of points and authorities states that "the Debtor reserves the right to re-value the property in connection with confirmation of the plan." Memorandum of Points and Authorities, filed August 7, 2013 ("P. & A."), at 7:18-19.

3 The following language in the debtor's memorandum of points and authorities is difficult to understand, but is clear enough to raise serious doubts about the valuation standards the debtor has employed:

> Debtor's real property is . . . subject to several mitigating factors. Buyer and seller are not present in this matter and no such characteristic is attributable. There would be no allotted time for typical market exposure due to imminent foreclosure probability absent the Bankruptcy scheme. The property is subject to undue stimulus from outside sources yet to be identified by debtor in the operative chain of title. Typical "open market valuation" is not possible due to past and imminent litigation associated with unidentified third parties making claims that are outside the record chain of title.

P. & A., at 6:23-28.

42.	13-28288-D-11 DJH-3	MICHAEL MATRACIA	MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION 8-7-13 [25]

Tentative ruling:

This is the debtor's motion for authority to use the cash collateral of Chase

Home Finance, LLC. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, for the following reasons, the motion will be denied.

First, there are the following service defects. The motion identifies the secured creditor as Chase Home Finance, LLC, whereas the moving party did not serve that entity, he served only JPMorgan Chase Bank (through the attorney who has filed a request for special notice in this case on behalf of the Bank). The court is generally aware that the two entities are related in some fashion; however, the moving party has submitted no evidence the two entities are in fact a single entity, and no authority for the proposition that, for example, service on a parent corporation constitutes proper service on a subsidiary. Second, the moving party was required to serve the 20 largest unsecured creditors in this case (Fed. R. Bankr. P. 4001(b)(1)(C)), among which are the IRS and the Franchise Tax Board, whereas the moving party failed to serve those creditors at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1(c).

Next, the moving party failed to submit any evidence establishing the factual allegations of the motion and demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6).

Finally, the motion and supporting documents are unclear as to the nature of the relief requested, and in particular, they are not sufficiently clear to enable the potential respondent to determine whether to oppose the motion or the court to determine whether to grant it. The memorandum of points and authorities in support of the motion defines the relief requested as "an order authorizing the use of cash collateral to pay professional fees, property taxes and insurance, establishing a maintenance reserve for unforeseen contingencies, utilities and services as necessary." Memorandum of Points and Authorities, filed August 7, 2013, at 2:20-22. However, the debtor has also submitted as an exhibit a Proposed Cash Collateral Budget that contains only the following expense entries and amounts:

	July 2013	Subsequent
Utilities	$105	$105
Maintenance Reserve	$225	$225
Property Taxes	$ 75	$ 75

The budget contains no entry for professional fees; the entry for utilities is non-specific; and to the extent the reference to a maintenance reserve simply means the debtor is going to set aside $225 per month in some specially-designated account, that would not constitute a "use" of cash collateral for which a court order would be required. By the same token, however, even if this motion were granted, the debtor would not be authorized to spend any of the money in the reserve account absent a further court order, because he has not described the purposes for the use of that cash collateral, as required by Fed. R. Bankr. P. 4001(b)(1)(B)(ii). The budget also states that the surplus after payment of the above expenses is $1,395 per month, and in regards to the surplus, states "Budget for use for other, general uses and expenses of the estate, as well as additional." Debtor's Ex. A. This description is too general to qualify as a statement of the purposes for the use of cash collateral; thus, even if this motion were granted, the debtor would not be authorized to spend any of the $1,395 surplus.

Finally, the debtor proposes to make no ongoing monthly payments to the secured creditor (be it Chase Home Finance, LLC, or JPMorgan Chase Bank), contending instead that the creditor's interest in the property will be adequately protected because (1) the value of the property is not decreasing; and (2) the creditor's cash collateral will be used to maintain and operate the property, which is the creditor's collateral. There is no evidence to support the former of these conclusions, and in fact, based on the condition of the property, as described in the debtor's declaration in support of his motion to value collateral, it seems doubtful the property's value is stable.

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