11**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

**September 18, 2013 at 10:00 a.m.**

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**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 the 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.**

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| 1. | 13-30307-D-7 | LETICIA REED | MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE<br>8-3-13 [5] |
| 2. | 11-42209-D-7<br>GMR-1 | AMERICAN PRIVATE SECURITY INC. | MOTION TO EMPLOY GABRIELSON & COMPANY AS ACCOUNTANT(S)<br>8-21-13 [38] |

**Final ruling:**

**The matter is resolved without oral argument. This is the trustee's motion to employ Gabrielson & Company (the "Accountant") as his accountant in this case. The court's records indicate that no timely opposition has been filed and, except as discussed below, the relief requested in the motion is supported by the record. The motion will be granted in part.**

**The trustee seeks nunc pro tunc approval; that is, to employ the Accountant effective February 25, 2013, to prepare tax returns, represent the trustee with the taxing authorities, and review the financial records of the debtor, American Private Security ("APS") and other information related to its relationship and business dealings with International Security Solutions, Inc. ("ISS"). The trustee cites In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988), for the applicable standards. The basis for the trustee's request for retroactive approval is that the Accountant was previously employed as accountant for the trustee in his capacity as chapter 7 trustee in a related case, In re Ayk Tsatouryan, Case No. 11-41671 in this court, and that the Accountant "has already conducted an extensive review of accounting and financial information in relation to that case at the request of the trustee involving the business dealings between [the debtor] and ISS." Application to Employ, filed August 21, 2013, at 2:6-8. The order in the Tsatouryan case authorized the Accountant's employment effective February 25, 2013. (In that case, unlike here, the trustee's application to employ the Accountant was filed March 1, 2013, just four days after the effective date of the employment, February 25, 2013.) The trustee concludes:**

> **The services provided by Gabrielson and Company in connection with Ayk Tsatouryan's bankruptcy case directly benefited the Chapter 7 Estate of APS. Specifically, the information provided by Gabrielson and Company allowed your applicant to identify the existence of potential fraudulent transfers. As a consequence, applicant requests that the employment of Gabrielson and Company be effective as of February 25, 2013.**

**Id. at 3:16-22.**

**The trustee does not mention the important facts that (1) no motions for compensation were filed in the Tsatouryan case; (2) the trustee has issued a report of no distribution in that case; and (3) that case has been closed. Thus, there is no possibility the Accountant will be paid for his services performed for the trustee in that case – at least not from assets of the estate in that case. The trustee has cited no authority, and the court is aware of none, for the proposition that a professional who performs services for one bankruptcy estate, which turns out to have no funds to pay him, may be paid for those services from the assets of another bankruptcy estate. (The court notes that, with one exception, the proofs of claim filed in the Tsatouryan case are completely different from those filed in this case.) At such time as he seeks approval of compensation in this case, the Accountant may request approval of nunc pro tunc compensation; he will need to establish at that time that the requirements set forth in THC Fin. have been met; that is, that there is a satisfactory explanation for the failure to receive prior court approval for his employment in this case (which has not been offered here) and that his services have benefited the estate in this case. The court will not approve the Accountant's employment on a nunc pro tunc basis at this time.**

**The court will grant the motion in part. An order will be issued from chambers. No appearance is necessary.**

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| 3. | 12-34516-D-7<br>DNL-2 | RICHARD HARVEY AND WENDY LUENENBERG HARVEY | MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RICHARD STEPHEN HARVEY AND WENDY LUENENBERG HARVEY, PFC INSURANCE CENTER, INC., ANGELIQUEA PASSAGLIA AND RANDAL FLETCHER<br>8-20-13 [52] |

**Final ruling:**

**Per the amended notice of hearing filed on September 4, 2013, the hearing on this motion is continued to October 2, 2013 at 10:00 a.m. No appearance is necessary on September 18, 2013.**

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| 4. | 13-20618-D-7<br>13-2206<br>OZOH V. OCWEN LOAN SERVICING, LLC ET AL | OKEY OZOH<br>EAT-1 | MOTION TO DISMISS ADVERSARY<br>8-14-13 [6] |

**Final ruling:**

**The matter is resolved without oral argument. This is the motion of defendant NDeX West, LLC ("the defendant") to dismiss this adversary proceeding without leave to amend, pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The motion was noticed pursuant to LBR 9014-1(f)(1); the plaintiff has filed no opposition. For the following reasons, the motion will be granted and the adversary proceeding will be dismissed without leave to amend.**

**The plaintiff's complaint in this adversary proceeding alleges wrongful conduct by the defendant and others leading up to a foreclosure sale of the plaintiff's residence that took place on November 28, 2012. The plaintiff seeks an order compelling the defendant to provide valid proof of its right to enforce the promissory note underlying the deed of trust under which the foreclosure sale was held, and its right to foreclose on the property. He also requests that the court set aside the foreclosure sale, and "that Stella Walson's name be removed from the sale."1 The defendant has submitted evidence that the foreclosure sale was cried at 10:18 a.m. on November 28, 2012. As requested by the defendant, the court takes judicial notice of the fact that at 10:54 a.m. that day, the plaintiff filed a chapter 13 petition in this court, thereby commencing Case No. 12-40586. On December 12, 2012, the plaintiff filed schedules of his assets and liabilities; he did not disclose any claims against the defendant or any other person or entity as an asset. On December 17, 2012, the case was dismissed because the plaintiff had filed to file a statement of financial affairs, Form 22C (means test), or a chapter 13 plan, and the time for him to do so had expired. On May 2, 2013, the case was closed.**

**On January 17, 2013, after his prior case had been dismissed, the plaintiff filed a chapter 13 petition commencing Case No. 13-20618. As in his prior case, he did not list any claims against the defendant or any other person or entity as assets on his bankruptcy schedules, which were filed the same day. On February 15, 2013, the chapter 13 case was converted to chapter 7 on the motion of the**

plaintiff, as the debtor in the case. On April 24, 2013, the trustee filed a report of no distribution, and on May 22, 2013, the plaintiff received a bankruptcy discharge.2 On May 8, 2013, the plaintiff filed a motion in the chapter 7 case entitled "Motion to Set Aside Foreclosure Sale and to Remove Stella Walsons Name from the Sale" and a statement of facts in support of the motion. With a few exceptions, the motion is identical to the plaintiff's complaint in this adversary proceeding.3 The defendant filed opposition to the motion, and the court denied the motion, finding that because the plaintiff's potential claims arose pre-petition, they were property of the bankruptcy estate in the chapter 7 case. The court concluded that the plaintiff had no standing to pursue the claims, having "usurped the trustee's right to prosecute actions on behalf of the estate,"4 and therefore, that the court lacked subject matter jurisdiction over the claims.

The court also determined that the relief requested by the plaintiff required an adversary proceeding, and the plaintiff thereafter, on June 21, 2013, filed the complaint commencing this adversary proceeding. However, the absence of an adversary proceeding was merely an alternative ground on which the court denied the motion; the court also observed in its ruling, "Indeed, the debtor lacks standing to seek the relief herein by both motion and adversary proceeding. Only the trustee, Eric Nims, has the authority to commence such an action if he sees fit." Minutes at p. 2.

The court's findings may have been incorrect in one respect. It is possible that the plaintiff's claims alleged in this adversary proceeding – depending on when they arose – are property of the bankruptcy estate in one or another of the various bankruptcy cases the plaintiff has filed in this court in the past five years.5 What is certain is that the claims arose before the plaintiff filed his petition commencing the present chapter 7 case, Case No. 13-20618. Thus, to the extent, if any, the claims are not property of the bankruptcy estate in another of the plaintiff's cases, they became property of the bankruptcy estate in this case. 11 U.S.C. § 541(a)(1). As the claims were not scheduled in either this case or any of the plaintiff's prior cases, they remain property of the bankruptcy estate in this case or one or another of the earlier cases. 11 U.S.C. § 554(c), (d); see also Cusano v. Klein, 264 F.3d 936, 945-46 (9th Cir. 2001). As such, the claims are subject to administration only by the bankruptcy trustee(s) in this case or one or another of the prior cases, and the plaintiff has no standing to pursue them. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004). The defendant's motion will be granted on that basis, and the court need not reach the other grounds for dismissal raised by the defendant.

Finally, the defendant has requested that the dismissal be without leave to amend. Although the plaintiff purported in the complaint to reserve the right to amend the complaint, he did so solely on the basis that he is representing himself in this proceeding. He cited a case, Platsky v. CIA, 953 F.2d 26 (2nd Cir. 1991), that stands for the general proposition that courts are to "apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel." 953 F.2d at 28. The plaintiff cited this case for the proposition that the court should explain the correct form to a pro se litigant so he or she can amend accordingly. See id.

However, the plaintiff has not responded to the defendant's motion, despite the caution in the notice of hearing that he must do so not less than 14 calendar days prior to the hearing date or risk having the motion resolved and the relief granted without oral argument. The plaintiff has offered no alleged facts that would, if added to the complaint, demonstrate that he has standing to pursue the claims. Thus, the court concludes that any amendment of

**the complaint would be futile, and the court will grant the defendant's motion and dismiss the adversary proceeding without leave to amend. See Marty v. Wells Fargo Bank, 2011 U.S. Dist. LEXIS 29686, *24 (E.D. Cal. March 22, 2011), citing Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983). Because the court's findings and conclusions stated above pertain equally to the defendants other than NDeX, the adversary proceeding will be dismissed as to all the defendants.**

**The court will issue a minute order. No appearance is necessary.**

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**1 Declaratory Judgement of Verification of Debt and to Remove Stella Walsons Name from the Sale, and Set Aside the Sale, filed June 21, 2013 (which the court treated as a complaint commencing this adversary proceeding), at 11:10.**

**2 It is clear that the discharge was entered as the result of a clerical mistake or a mistake arising from oversight, because the plaintiff had received a discharge in an earlier case, Case No. 12-23759, a case commenced less than a year before he filed the petition in Case No. 13-20618. Thus, the plaintiff was not entitled to a discharge in Case No. 13-20618. 11 U.S.C. § 727(a)(8). The court is not sure why the mistake occurred; it is possible it was because the plaintiff failed to list Case No. 12-23759 – the case in which he had received the discharge – on his petition commencing Case No. 13-20618. In any event, pursuant to Fed. R. Civ. 60(a), incorporated in Case No. 13-20618 by Fed. R. Bankr. 9024, the court may correct the mistake on its own motion, with or without notice. Thus, the court will issue an order vacating the discharge in Case No. 13-20618.**

**3 The plaintiff added to the complaint a numbered list of 25 reasons for his conclusion that the defendant had no standing to foreclose on his property. However, those merely summarize or derive from the arguments the plaintiff had made in his motion.**

**4 Civil Minutes for June 19, 2013, DN 57 in Case No. 13-20618 ("Minutes"), at p. 2.**

**5 Case No. 08-37743, chapter 7, filed Dec. 2, 2008, closed April 14, 2009; Case No. 09-46807, chapter 7, filed Dec. 8, 2009, closed March 9, 2010; Case No. 11-49676, chapter 7, filed Dec. 28, 2011, closed Feb. 6, 2012; Case No. 12-23759, chapter 7, filed Feb. 27, 2012, closed June 15, 2012; Case No. 12-40586, filed Nov. 28, 2012, chapter 13 to chapter 7, closed May 2, 2013.**

5. 13-30019-D-7 AMBER LEAVY — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-31-13 [5]

6. 13-20823-D-11 MHK-8 — MELVIN/DARLENE SHIMADA — MOTION TO USE CASH COLLATERAL 8-20-13 [153]

**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 Debtors' Motion for Further Authority to Use Cash Collateral and to Make Adequate Protection Payments to Holders of Secured Claims [1364 Bryan Avenue, San Jose, California] is supported by the record. As such the court will grant the Debtors' Motion for Further Authority to Use Cash Collateral and to Make Adequate Protection Payments to Holders of Secured Claims [1364 Bryan Avenue, San Jose, California]. Moving party is to submit an appropriate order. No appearance is necessary.**

7. 13-20823-D-11 MHK-9 — MELVIN/DARLENE SHIMADA — MOTION TO USE CASH COLLATERAL 8-20-13 [147]

**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 Debtors' Motion for Further Authority to Use Cash Collateral and to Make Adequate Protection Payments to Holders of Secured Claims [1364 Bryan Avenue, San Jose, California] is supported by the record. As such the court will grant the Debtors' Motion for Further Authority to Use Cash Collateral and to Make Adequate Protection Payments to Holders of Secured Claims [1364 Bryan Avenue, San Jose, California]. Moving party is to submit an appropriate order. No appearance is necessary.**

8. 13-26823-D-7 — KARI HAMILTON VINEET PARNAMI VS. — AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY 8-20-13 [17]

9. 13-28724-D-7 GFG-1 — EDWARD/DARCI BROWN — MOTION TO COMPEL ABANDONMENT 8-13-13 [10]

**Tentative ruling:**

**This is the debtors' motion to compel abandonment of their business known as Brown's Floor Covering, in Jackson, California. The trustee has filed a report of no distribution in this case; thus, it appears he does not oppose the motion. Based on that fact and on the record in this case, the court tentatively finds that the business is of inconsequential value to the estate.**

**However, the notice of hearing purports to require that parties opposing the motion file written opposition by September 19, 2010, and the notice does not refer to the 14-day rule of LBR 9014-1(f)(1). Thus, the correct date for the filing of written opposition cannot be determined from the notice. The court will hear the matter to determine whether any party-in-interest wishes to oppose the motion.**

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| 10. | 13-30324-D-7 | SPENCER DYSON | MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE<br>8-5-13 [5] |

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| 11. | 13-30827-D-7<br>DJC-1 | DOUA YANG AND VASANA VANG | MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA<br>8-19-13 [5] |

**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.**

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| 12. | 13-29030-D-7 | WILLIAM/JANET CHENG | MOTION TO TERMINATE THE SUNTAG LAW FIRM, DANA A. SUNTAG TO REPRESENT GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE<br>8-20-13 [25] |

**Tentative ruling:**

**This is the motion of debtors William Cheng and Janet Cheng (the "debtors") to terminate the employment of Dana Suntag and the Suntag Law Firm ("Counsel") as counsel for the chapter 7 trustee in this case, Geoffrey Richards (the "trustee"). The trustee and creditors Dennis C. Brenning and the Dennis C. Brenning Trust have filed opposition, and the debtors have filed an objection to the trustee's opposition. For the following reasons, the motion will be denied.**

**As grounds for their motion, the debtors allege that: (1) the trustee's application to employ Counsel was not signed by the trustee, and thus, is not valid; (2) Counsel did not serve the proposed order approving its employment on the debtors; (3) Counsel has "very strong connection[s] with First American Specialty Insurance Co. and First American Title Insurance Co." (Debtors' Motion, DN 25 ("Motion"), at 2:13-15) that constitute conflicts of interest; and (4) without notice to the debtors, Counsel cancelled a settlement conference and other hearings**

in a state court proceeding involving the debtors and First American Specialty Insurance Co. The debtors also included in their motion a long list of complaints about the proceedings that have taken place in the state court litigation between the debtors and the First American entities, and about certain judgments and judgment liens, an alleged fraudulent deed of trust, and an alleged wrongful foreclosure. The debtors request that the trustee and the court investigate these matters, and they ask the court to stop certain parties from making illegal claims to the debtors' estate.

Taking these issues in reverse order, the court notes that the motion was served only on the trustee and Counsel, and not on any of the parties whose claims the debtors are referring to. Thus, the court is not in a position to grant any relief except insofar as it concerns the trustee and Counsel. Further, it appears that much of the relief sought would require the commencement of an adversary proceeding, as, for example, to determine the validity and extent of liens (see Fed. R. Bankr. P. 7001(2)) or for injunctive relief (see Fed. R. Bankr. P. 7001(7)). Thus, the court will take no action on this motion except with respect to the debtors' request that Counsel's employment be terminated.

As to that request, the procedure Counsel followed in submitting the application to approve his employment was appropriate under the Federal Rules of Bankruptcy Procedure and this court's local rules. It was not a requirement that the trustee himself sign the application, nor that Counsel serve a copy of the proposed order on the debtors. It is undisputed that the application, notice of application, and supporting declaration were served on the debtors, the trustee, and the Office of the United States Trustee; nothing more was required. (The proof of service also evidences service of the proposed order, which the debtors dispute; however, service of that document was not a requirement.) Counsel was not required to set the matter for a noticed hearing, as the debtors contend.

There is no admissible evidence whatsoever that Counsel has any connections with either of the First American entities or with any other party-in-interest in this bankruptcy case or in the state court litigation. The debtors' statement that Counsel has strong connections with those entities and the statement in the debtors' objection to the trustee's opposition that "Suntag law firm represent PLM and have done jobs with PLM" (Objection to the Trustee's Opposition, DN 51 ("Objection"), at 2:28) are both pure speculation, and are directly contradicted by the admissible testimony of Dana Suntag in his declaration in opposition to the motion and his declaration in support of the employment application.

The debtors' complaint that Counsel cancelled a settlement conference and other hearings in the state court proceeding without notice to the debtors is equally unavailing. The trustee's evidence, including the declaration of Dana Suntag and the transcript of the meeting of creditors, shows the following. Counsel learned from the debtors at the meeting of creditors on August 13, 2013 that they are the plaintiffs in a lawsuit against First American Specialty Insurance Company. Following the meeting, Counsel located the record of the case on the state court's website, found that there was a hearing scheduled for August 19, 2013 on defendant First American Specialty Insurance Company's motion for terminating sanctions (a motion to dismiss the action), and a hearing set for August 21, 2013 on the debtors' motion to set aside the order that formed the basis for the defendant's motion for terminating sanctions (the discovery order the defendant claims the debtors violated). Counsel contacted the defendant's attorney and arranged for a stipulation to continue both hearings.[1]

The debtors' causes of action asserted in the state court litigation unequivocally became property of the bankruptcy estate when the debtors filed the petition commencing this case. 11 U.S.C. § 541(a)(1); Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001) [assets of the estate include causes of action]. As such, the causes of action are subject to administration only by the trustee, and the debtors have no standing to pursue them. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004). Counsel acted well within his appropriate duties in representing the trustee when he negotiated the stipulation. (The fact that the order approving his employment had not yet been signed, which the debtors complain of, is irrelevant. The application to employ had been filed, and as is common in this court, the order approved the employment as of an effective date 19 days earlier.) As the debtors have no standing to pursue the state court claims, Counsel was under no obligation to notify them of the stipulation or the continuances.

In this regard, the court is concerned that the debtors characterize this motion at one point as a request that the court "terminate Dana Suntag, the Suntag law firm to represent the Chapter 7 Trustee, the estate, the debtors etc." Motion, at 9:16-18. The debtors should be aware that Counsel has been employed to represent the trustee in the trustee's capacity as the representative of the estate. Counsel has not been employed to represent the debtors. The court would strongly encourage the debtors to obtain advice about this bankruptcy case from an attorney; they must not rely on Counsel to represent their interests, as that is not his job.

Finally, in their objection to the trustee's opposition, the debtors asserted that "[i]t is the undisputed facts that The Chengs joint petition without William Cheng signature is not valid." Objection, at 1:20-21. The debtors have filed a motion, set for hearing on October 2, 2013, to dismiss this case on the ground that the petition was not signed by William Cheng. The court will take up that matter at the appropriate time; for present purposes, whether true or not, the allegation has no bearing on the trustee's employment of Counsel.

The court hereby cautions the debtors that several aspects of their motion do not comply with the court's local rules and Guidelines for the Preparation of Documents. The motion does not contain a docket control number, as required by LBR 9014-1(c). The motion, notice of hearing, exhibits, and proof of service were all filed as a single document, rather than separately, as required by LBR 9014-1(d)(2) and (e)(3), LBR 9004-1(a) and section 3(a) of the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. The proof of service is not signed under oath, as required by 28 U.S.C. § 1746, and does not contain the typewritten name of the person signing it, as required by LBR 9004-1(c). The court bases this ruling on the merits of the motion, and not on these procedural defects. However, in the future, if the debtors fail to comply with these rules, their motions will be summarily denied.

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

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1 The debtors did not list any claims against any person or entity as assets on their bankruptcy schedules. In fact, other than a single piece of real property listed on their Schedule A, the debtors listed no other assets at all. Every line item on their Schedule B contains the handwritten word "None." In answer to the question in their Statement of Financial Affairs requiring them to list all suits and administrative proceedings to which they have been parties within the prior year, the debtors checked the box "None." The debtors did not mention at the

**meeting of creditors either the motion for terminating sanctions or their motion to set aside the order, and they did not tell the trustee there were hearings coming up in the state court litigation in just a few days.**

13. 13-29230-D-7 VI LUONG — MOTION TO COMPEL ABANDONMENT
FF-1 — 8-19-13 [11]

**Final ruling:**

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

14. 13-29230-D-7 VI LUONG — MOTION TO AVOID LIEN OF DONAHUE SCHRIBER REALTY GROUP, LP
FF-2 — 8-19-13 [16]

**Final ruling:**

**This is the debtor's motion to avoid a judicial lien held by Donahue Schriber Realty Group, L.P. ("Donahue"). The motion will be denied because the moving party failed to serve Donahue in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Donahue (1) at a street address with no attention line; (2) through the attorney who obtained Donahue's abstract of judgment; and (3) by certified mail to the attention of an officer, managing or general agent, or agent for service of process. The first method was insufficient because the rule requires that service on a partnership must be addressed to the attention of an officer, managing or general agent, or agent for service of process, whereas here there was no attention line. The second method was insufficient because there is no evidence the attorney is authorized to accept service of process on behalf of Donahue in bankruptcy contested matters. In fact, the attorney's request for special notice filed in this case states that the attorney has not been designated to receive service of process for Donahue in any adversary proceeding or lawsuit. The third method was insufficient because service on a corporation or partnership that is not an FDIC-insured institution must be by first-class mail, not certified mail.**

**This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b)(3), would be superfluous.**

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

15. 12-37335-D-11 ISMAEL/MARIA GUILLEN
UST-1

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

16. 13-23439-D-7 JUST/VICKIE WILLIS
SJJ-1

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-23-13 [23]

**Tentative ruling:**

**This is the debtors' motion to convert this case from chapter 7 to chapter 13. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling. For the following reasons, the court intends to deny the motion.**

**The basis for the motion is that "[t]he Debtors' financial and/or legal situation has unexpectedly changed and the Debtors now desire to convert to Chapter 13." Motion to Convert Case, filed Aug. 23, 2013, at 1:19-20. Neither the motion nor the debtors' supporting declaration indicates what those unexpected changes are. The debtors have filed amended schedules, however, that disclose certain alleged changes in their income and expenses, which, together with their proposed chapter 13 plan, support the conclusion that the debtors have forfeited their right to have the case converted to chapter 13. See Marrama v. Citizens Bank, 549 U.S. 365, 375 n.11 (2007). The debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on March 14, 2013. The meeting of creditors was held in three sessions, and was ultimately concluded on May 21, 2013, after which the trustee issued a notice to creditors to file proofs of claim due to the possible recovery of assets. He also filed an application to employ a real estate broker to market the debtors' real property at 939 Eden Valley Road, Colfax, California, which is the residence of debtor Just Willis. (Debtor Vickie Willis has a different address.) The debtors had listed the value of the property at $224,000 in their schedules, with liens against it totaling $209,767; they claimed the difference, $14,233, as exempt. The trustee, however, based on his broker's opinion, believes the property is worth approximately $400,000, which if accurate, would mean approximately $176,000 in equity for the estate, a sum that would easily pay the commission, costs of sale, trustee compensation, and unsecured claims, scheduled by the debtors at a total of $62,469, in full. It is apparently on account of the trustee's decision to market the property that the debtors filed this motion.**

**On their original Schedule I, filed with the petition on March 14, 2013, the debtors indicated they were separated. They also listed the following individuals as dependents: a 19-year old son, the son's 18-year old fiancee, the debtors' one-month old grandchild, the debtors' 37-year old daughter, and the debtors' eight-year old**

**grandchild. On their original Schedule I, the debtors listed debtor Just Willis' employment as "manufacturer's representative/self-employed - Preservation Packaging," with gross and net income of $2,309 per month. They listed debtor Vickie Willis' pension income at $1,724 per month, for total combined income of $4,033. Where required on Schedule I to disclose any increase or decrease in income reasonably anticipated to occur in the next year, the debtors listed nothing. The debtors filed two Schedules J – one for each of the debtors, with combined household expenses totaling $6,877. Thus, their original schedules showed monthly net income of <$2,843> per month. As with their Schedule I, the debtors' Schedules J required them to disclose any increase or decrease in expenses anticipated to occur in the next year; again, the debtors disclosed no anticipated changes.**

**On August 23, 2013, the same day they filed this motion, and ten weeks after the trustee sought to employ a broker, the debtors filed amended Schedules I and J. On the former, they have described Just Willis' employment exactly as before, and the amount of his income from employment, together with Vickie Willis' pension income, exactly as before, but they have added in Just Willis' column "anticipated business income" of $1,500 per month, bringing his total income to $3,809 and their combined income to $5,533. There is no indication of the source of this anticipated business income. To the extent the debtors mean to suggest that Just Willis will simply be able to earn more in his capacity as a manufacturer's representative for Preservation Packaging, that conclusion is not supported by the record. At $3,809 per month, Just Willis would earn $45,708 per year, whereas the debtors' statement of financial affairs discloses he earned gross income of just $37,036 in 2011, $29,959 in 2012, and $1,375 year-to-date in 2013 (in two and one-half months).**

**The debtors' amended Schedule I shows their marital status as married, not separated as before, and their dependents as including their 18-year old son and his fiancee, and the debtors' one-month old grandchild, but not their 37-year old daughter and their eight-year old grandchild. The debtors have filed a single amended Schedule J showing household expenses at $5,038 (down from the combined $6,877 shown on their original Schedule J). With the anticipated business income of $1,500 and the reduced expenses resulting from the debtors apparently combining their households, their amended Schedule J shows monthly net income of $495.**

**The debtors have filed a chapter 13 plan under which they would pay $495 per month for 36 months, for a total of $17,820. The plan incorrectly does not list the debtors' car loan or two mortgages at all, but it is clear from the debtors' amended Schedule J that those would be paid directly to the creditors rather than through the plan. From the $17,820, however, would be deducted the chapter 13 trustee's compensation; the plan also provides for $2,000 to the chapter 7 trustee and $5,350 for the debtors' attorney, in addition to the $1,150 he has already been paid.**

**The debtors' estimate of general unsecured claims, as listed in their plan, incorrectly includes the amounts of both mortgages and the car loan, along with the debtors' unsecured debt, for a total of $291,409. The plan proposes a 1% dividend on those claims. If the secured claims are backed out of that total, there would be general unsecured claims totaling only $62,469, but the proposed plan payments, less the administrative expenses described above, would be sufficient to pay a dividend of only 14% on those claims, as contrasted with the 100% that would be paid if the case remains in chapter 7 and the trustee is able to sell the property for even a portion of his estimate of its value. By the court's calculations, given the**

**trustee's broker's agreement to take a 5% commission, and with additional costs of sale of 1%, the trustee would need to sell the property for only $330,000 in order to pay both liens against the property, the debtors' exemption claim, the real estate commission and costs of sale, the trustee's compensation, and all unsecured claims in full.**

**In short, the debtors' proposed plan, even if adjusted to remove the secured claims from the total of general unsecured claims, would fall far short of meeting the liquidation test of § 1325(a)(4) of the Bankruptcy Code. Further, the court has no reason to believe debtor Just Willis will be able to increase his income by $1,500 per month; thus, it is likely the proposed plan is not feasible. Finally, given the circumstances – the debtors' decision to seek to convert the case only after the trustee discovered that their schedules apparently seriously undervalued their property, and given the dramatic and speculative changes to their income and expenses, again, only after the trustee decided to market the property and after the debtors had testified under oath they anticipated no such changes, the court would be unable to conclude that the plan has been proposed in good faith.**

**The Supreme Court's decision in Marrama v. Citizens Bank, supra, 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. 549 U.S. at 375 n.11. 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 concludes that by their conduct in connection with their schedules, amended schedules, and chapter 13 plan filed in this case, the debtors have forfeited their right to have the case converted to chapter 13.**

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

17. 10-26347-D-7 LESLIE BRACK — MOTION TO SURCHARGE EXEMPT ASSETS AND/OR MOTION FOR TURNOVER OF PROPERTY
MFB-3 — 8-8-13 [33]

**Tentative ruling:**

**This is the trustee's motion for an order requiring the debtor to turn over the following assets that were not disclosed on the debtor's schedules, or their reasonably equivalent value in cash: (1) $60,486 in spousal support arrears; (2) a Scottrade dividend of $3,918; and (3) 2,000 shares of Scottrade (or 2,000 shares held in a Scottrade account – see below) (the "Assets"). The trustee also seeks authority to surcharge the debtor's exempt personal property assets to the extent she fails to turn over the Assets or their value in cash. The debtor has filed opposition, and the trustee has filed a reply. For the following reasons, the motion will be granted in part.**

It is undisputed that the debtor did not list the Assets on her bankruptcy schedules. It is also undisputed that the Assets became property of the bankruptcy estate at the time the petition was filed, on March 15, 2010. Nevertheless, over the next several months, the debtor, without informing the trustee, negotiated with her former spouse, David Brack, a stipulated judgment resolving the remaining issues in their marital dissolution action, including the division of the Assets. As pertinent to this matter, the judgment awarded the debtor (1) the right to receive $80,000 from the sale of a vacant lot in Auburn, California (the "Spy Glass Property"), as payment of spousal support arrears; (2) one-half of the $3,918 Scottrade dividend; and (3) 2,000 shares of the parties' existing 9,794 shares of stock. (As discussed below, there appears to be a dispute as to the company whose shares were to be divided.)[1]

Because the Assets are property of the estate, the trustee seeks an order requiring the debtor to turn them over to him, or in the alternative, an order that the debtor's exempt property may be surcharged for the value of the Assets she fails to turn over. (As to the spousal support arrears, the trustee has calculated the total due as of the petition date to be $60,486, not $80,000.) The debtor responds that she has never received any of the spousal support arrears, and that, although she received $1,959.39 – one-half of the Scottrade dividend – and the 2,000 shares of stock in or about October of 2010, she used the money for household expenses, and cannot afford to turn over the cash equivalent to the trustee. Thus, the remedy that appears to be in play here is surcharge of the debtor's exempt assets.

In some situations, surcharge is an available remedy. In Latman v. Burdette, 366 F.3d 774 (9th Cir. 2004), the court held that "the bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary both to protect the integrity of the bankruptcy process and to ensure that a debtor exempts an amount no greater than what is permitted by the exemption scheme of the Bankruptcy Code." 366 F.3d at 786. The remedy is not to be used lightly; however, "[u]nder exceptional circumstances, . . . surcharge may be the only means fairly to ensure that debtors retain their statutory 'fresh start,' while also permitting creditors access to property in excess of that which is properly exempted under the Bankruptcy Code." Id. Thus, surcharge is appropriately applied to prevent "what would otherwise have been a fraud on the bankruptcy court and the [debtor's] creditors caused by the [debtor's] non-disclosure of monies that should have been listed on the bankruptcy schedules and available for the [debtors'] creditors." Id. at 785.

The debtor's reasons for failing to disclose the Assets are, as the trustee contends, difficult to accept. First, she claims she was unaware of the existence of the Assets until she and David Brack negotiated the stipulated judgment in the fall of 2010. She states that during the marriage, Mr. Brack "handled the household finances including investment decisions and did not share household finance information with [her]."[2] Further, because of "ongoing domestic abuse" (id. at 2:8), for which she obtained a restraining order, she "feared that any inquiry into the household assets would be futile." Id. at 2:9.

Although this might make sense with respect to the Scottrade dividend and stock account, it does not make sense with respect to the roughly $60,000 in spousal support arrears the debtor was owed as of the petition date. On December 15, 2008, over a year before the debtor commenced this case, the state court awarded her spousal support of $3,558 per month retroactive to November 10, 2008. It is simply not realistic that the debtor was not aware of the significant amount that had built up in her favor as of the petition date.

The debtor's argument that "this asset was disclosed on my initial bankruptcy schedules in the form of a community property interest in [the Spy Glass Property]" (Decl. at 2:23-25) is disingenuous for two reasons. First, it should be obvious to any bankruptcy debtor that an asset must be disclosed in a form identifiable by the trustee and creditors, not in the form it may (or may not) take several months later, as here for example, a right to be paid from another asset entirely. Here, the debtor clearly knew – as of the petition date – that she was entitled to a sizeable amount of money in past-due spousal support, yet on Schedule B, where explicitly required to list "alimony, maintenance, support, and property settlements to which the debtor is or may be entitled," the debtor answered "None." And at the meeting of creditors, when the trustee asked whether she anticipated receiving any future financial benefits, the debtor replied that there were no changes needed.

Second, and equally damaging to the debtor's argument, she did not list a community property interest in the Spy Glass Property on her Schedule A. Instead, she explicitly described the property as her "Ex-husband's separate property," adding, "Debtor does not believe that she has any ownership interest in this asset, but is listing it in the interests of full disclosure." Debtor's Schedule A, filed March 15, 2010, under cover of her petition. As it turns out, the description of the property as her former spouse's separate property was inaccurate – on August 11, 2008, over a year before the petition was filed, David Brack recorded a grant deed transferring title from himself to himself and the debtor, "as community property with right of survivorship" (Trustee's Ex. 1), and the debtor, as well as David Brock, signed the grant deed.

Even as to the Scottrade dividend and stock account, the debtor's explanation is weak. Even if the debtor was afraid to ask her husband about their assets or afraid he would not tell her the truth, she did not qualify her "None" answers on her Schedule B, and did not inform the trustee she might have other assets but was afraid to confront her husband. In fact, when the trustee asked her at the meeting of creditors whether she expected any future financial benefits, she said there were no changes needed to her schedules. She has failed to explain why she did not disclose these assets when she received them (and spent the money) in the fall of 2010. In a familiar refrain in this court, the debtor claims her family law attorney "likely did not fully comprehend the legal ramifications of the Bankruptcy Code's requirements." Decl. at 2:19-20. The duty to disclose all of one's assets on one's bankruptcy schedules is not a sophisticated or specialized legal concept. Rather, a bankruptcy debtor has a duty of careful, complete, and accurate reporting in his or her schedules, and bears the risk of nondisclosure. 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).

In these circumstances, the court concludes that the debtor's conduct in failing to disclose the Assets falls within the type of conduct for which the surcharge remedy is available to protect the integrity of the bankruptcy process. Thus, one part of the Latman test is satisfied here (see 366 F.3d at 786), and the court must fashion a remedy that "ensure[s] that [the] debtor exempts an amount no greater than what is permitted by the exemption scheme of the Bankruptcy Code." Id. On December 7, 2011, the debtor filed an amended Schedule C purporting to claim as exempt a $3,288 interest in the Spy Glass Property (representing the unused balance of her wild-card exemption.) This exemption claim is invalid and ineffective because the amended schedule was not filed under cover of an amendment cover sheet and was not otherwise verified by the debtor, as required by Fed. R. Bankr. P. 1008. Thus, the debtor still has $3,288 of her wild-card exemption available.

Against that amount, the debtor will be charged with the $3,918 Scottrade dividend.[3] To not charge this asset against the debtor's remaining wild-card exemption, allowing her instead to use the remaining wild-card for other assets, such as the proceeds of the Spy Glass Property, would be to allow her to get the full benefit of the wild-card exemption (and her other exemptions) while retaining the non-exempt Scottrade dividend, a result directly contradicted by Latman.

Charging the Scottrade dividend against the $3,288 would appear to use up the remainder of the debtor's wild-card exemption. However, the debtor states that although she claimed her 2009 tax refunds as exempt in the amount of $5,000, she actually received much less. Thus, the debtor could amend her Schedule C to claim a portion of the proceeds of the Spy Glass Property to the extent of the difference between her $5,000 tax refund exemption claim and the total of her actual refunds (the "Tax Refund Difference"). The debtor will be required to provide the trustee with evidence of the amounts of her actual refunds; against the Tax Refund Difference, the debtor will be charged with the additional $630[4] of the Scottrade dividend and with the 2,000 shares of stock she received in the fall of 2010 but did not disclose. This will leave the debtor with no unused amount in her wild-card exemption.

There will remain as assets of the estate the debtor's right to (1) the balance of the funds she received for the stock shares, something over half of $11,660 and possibly more, depending on the accuracy of the trustee's information that the shares were not shares of Scottrade but were shares of PRI Medical Technologies, Inc. held in a Scottrade account; and (2) the $60,486 in accrued spousal support due as of the petition date. The court will not order the debtor to turn over the $60,486 at this time as there is no evidence she ever received it; thus, the estate is no worse off than it would have been had she scheduled the asset at the outset. (Of course, if the debtor receives any of the funds while this remains an estate asset, she would be required to turn them over to the trustee.) As to the balance of the stock proceeds, the court will not order the debtor to turn them over at this time and will not issue a judgment in the trustee's favor because the trustee appears to concede the debtor would not be in a position to pay it. To the extent the trustee later becomes aware the debtor would be able to pay some portion of that sum, the court will reconsider this issue.

The court will hear the matter.

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1 As discussed below, the debtor did disclose the Spy Glass Property on her Schedule A. The trustee and David Brack, as co-owner, have sold the lot, and the trustee has received the entire amount of the net proceeds, $40,489. (It is an open question whether David Brack claims an interest in the proceeds.)

2 Debtor's declaration, filed Sept. 4, 2013 ("Decl."), at 2:6-8.

3 Under the stipulated judgment, the debtor was awarded one-half of the dividend, which she spent; however, the debtor has not disputed that the entire dividend was community property at the time the debtor's petition was filed, under § 541(a)(2). Further, as the negotiations and the stipulated judgment were both acts to obtain property of or from the estate and to exercise control over property of the estate, they were void and of no effect. Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571, 572 (9th Cir. 1992).

4 $3,918 - $3,288.

18. 12-39647-D-7 WILLIAM/CORREENA HANNAH — MOTION TO AVOID LIEN OF DISCOVER BANK
RR-4 — 8-19-13 [59]

**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.**

19. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-2402 CDH-2
BURKART V. CHAND — 6-19-13 [43]

**Tentative ruling:**

**This is the motion of the plaintiff in this adversary proceeding, who is also the trustee in the chapter 7 case in which this adversary proceeding was filed (the "trustee"), for entry of a default judgment against the defendant, Vinesh Chand (the "defendant"). For the following reason, the motion will be denied.**

**In connection with the initial hearing on the motion, the court issued a tentative ruling indicating that, with one caveat, the court was prepared to grant the motion. The caveat was that it was not clear from the dockets in this adversary proceeding and in the chapter 7 case that the correct defendant had been served. Specifically, the claims register in the parent case shows three proofs of claim – Claim Nos. 4, 156, and 165 – filed by a claimant or claimants named Vinesh Chand; the proofs of claim list the claimants at different addresses. The hearing was continued to allow the trustee's counsel to address this issue. The court added in its ruling that if the court is not persuaded that the correct defendant was served, the trustee would be required to ascertain the correct address and serve the defendant properly.**

**As of this date, the trustee has filed nothing to establish that the correct defendant was served, and in fact, the court now believes service in this adversary proceeding – from the beginning – has not been correctly accomplished. First, according to the docket in this adversary proceeding, on two separate occasions, an envelope addressed to Vinesh Chand at the address utilized by the trustee has been returned to the court as undeliverable. Second, the trustee has utilized in this adversary proceeding the address of the Vinesh Chand who filed Claim Nos. 4 and 165, and has never used the address of the Vinesh Chand who filed Claim No. 156, whereas the trustee has not established that the Vinesh Chand who filed Claim Nos. 4 and 165 is the correct defendant. If instead the Vinesh Chand who filed Claim No. 156 is the correct defendant, the court would conclude that the correct defendant has not been served.**

**Finally, if the Vinesh Chand who filed Claim Nos. 4 and 165 is the correct defendant, service at the address utilized by the trustee was apparently incorrect.**

**The court has now discovered that an individual named Vinesh Chand filed in another adversary proceeding in this case, Adv. No. 10-2573, a Change of Address listing as his old address, as of November 18, 2011, the address the trustee has been using to serve Vinesh Chand, the defendant in this adversary proceeding. The trustee did not file his complaint commencing this adversary proceeding until August 6, 2012. By that time, Vinesh Chand, the plaintiff in Adv. No. 10-2573, had moved from the address the trustee has been using for service on Vinesh Chand, the defendant in this adversary proceeding. In short, whether the correct defendant is the individual who filed Claim Nos. 4 and 165 or the individual who filed Claim No. 156, it appears service on that individual – from the beginning of this adversary proceeding – has not been correctly accomplished.**

**As a result of this service defect, the motion will be denied. The court will hear the matter.**

20. 13-23455-D-7 LEILA/LUCITO VILLANUEVA — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
PNC BANK, N.A. VS.
8-12-13 [28]

**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.**

21. 12-37060-D-7 ROYA NESVA — MOTION TO COMPEL ABANDONMENT
SCR-1
8-22-13 [32]

**Final ruling:**

**This is the debtor's motion to compel the trustee to abandon certain real property. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court would ordinarily entertain opposition, if any, at the hearing. However, the court is not prepared to hear the motion because the proof of service does not adequately evidence service on the trustee and the United States Trustee. The proof of service states that the moving party served the trustee and the United States Trustee "By ECF Email," which does not comply with the court's local rules. The court cannot determine whether the moving party served those parties by e-mail or relied on the court's CM/ECF system (the so-called "free look") for service. If the moving party served those parties by e-mail, the proof of service is insufficient because it does not state the e-mail addresses at which the parties were served, as required by LBR 7005-1(d)(3). If the moving party relied on the court's CM/ECF system, the applicable rules do not permit service in that manner. See Fed. R. Civ. P. 5(b)(3), authorizing service via the court's transmission facilities only where authorized by local rule; LBR 7005-1(d), not authorizing service by such means.**

**The court notes that the trustee in this case has previously employed a broker to attempt to sell the property as to which the debtor seeks abandonment, and has successfully objected to the debtor's claim of exemption of the proceeds of any short sale, deed-in-lieu, or "cash-for-keys" transaction concerning the property. Thus, despite the apparent lack of equity in the property according to the debtor, it is important that the trustee receive notice of the hearing.**

**The court will continue the hearing to October 2, 2013, at 10:00 a.m., the moving party to file a notice of continued hearing and to serve it on the trustee, the United States Trustee, and all creditors no later than September 18, 2013, and to file a proof of service no later than September 20, 2013. The moving party shall also serve the motion and supporting declaration on the trustee and the United States Trustee, and file a proof of service of the same. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required), and shall not include the language used by the moving party in the original notice of hearing (1) to the effect that if a party mails a response to the court for filing, he or she must mail it early enough so the court will receive it before the date of the hearing, or (2) to the effect that if a party does not take these steps, the court may grant the motion, in some circumstances without even conducting an actual hearing. Both of these phrases contradict the very plain provision of the local rule that the notice of hearing state whether or not written opposition must be filed (see LBR 9014-1(d)(3)); both of these phrases may tend to inhibit parties-in-interest from appearing at the hearing.**

**The hearing will be continued by minute order. No appearance is necessary on September 18, 2013.**

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| 22. | 09-29162-D-11<br>SH-177 | SK FOODS, L.P. | MOTION TO AMEND<br>8-9-13 [4426] |

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

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| 23. | 09-29162-D-11<br>10-2117<br>SHARP ET AL V. INTERNAL REVENUE SERVICE ET AL | SK FOODS, L.P.<br>TJD-4 | MOTION TO STAY ADVERSARY PROCEEDING<br>8-19-13 [225] |

**Final ruling:**

**This is the motion of the plaintiff in this adversary proceeding, Bank of Montreal, as Administrative Agent ("BMO") to stay this adversary proceeding for an indefinite period of time. BMO has filed the same motion in two other adversary proceedings in this chapter 11 case. The motion was properly served and no opposition has been filed. BMO contends the adversary proceedings should be stayed because litigation pending in the United States District Court for this district may**

**resolve or narrow the issues in these proceedings. In addition, a stay would free the parties to devote their time and resources to ongoing settlement discussions. BMO represents that "[t]he remaining active litigants, including those that are involved in the [district court] proceedings, support a stay of these proceedings . . . ." Motion to Stay Adversary Proceeding, filed Aug. 19, 2013, at 4:3-5. BMO specifically states that a stay is supported by the remaining active defendants in this and the other two adversary proceedings, the Internal Revenue Service, the Franchise Tax Board, Stefanie Salyer and Caroline Salyer and their respective trusts, and Cary Collins. Given these circumstances, and in light of the factors the court is to consider in determining whether to stay civil litigation,[1] especially the potential prejudice to the respective parties and the efficient use of judicial resources, the court will grant the motion.**

**The moving party is to submit an appropriate order. No appearance is necessary.**

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**1 See Keating v. Office of Thrift Supervision, 45 F.3d 322, 324-25 (9th Cir. 1995).**

24. 09-29162-D-11 SK FOODS, L.P.
11-2339 TJD-7
BANK OF MONTREAL V. CALIFORNIA FRANCHISE TAX BOARD ET AL

MOTION TO STAY ADVERSARY PROCEEDING
8-19-13 [349]

**Final ruling:**

**This is the motion of the plaintiff in this adversary proceeding, Bank of Montreal, as Administrative Agent ("BMO") to stay this adversary proceeding for an indefinite period of time. BMO has filed similar motions, also on this calendar, in two other adversary proceedings in the SK Foods chapter 11 case. The motion was properly served and no opposition has been filed. BMO contends the adversary proceeding should be stayed because litigation pending in the United States District Court for this district may resolve or narrow the issues in this proceeding. In addition, a stay would free the parties to devote their time and resources to ongoing settlement discussions. BMO represents that "[t]he remaining active litigants, including those that are involved in the [district court] proceedings, support a stay of these proceedings . . . ." Motion to Stay Adversary Proceeding, filed Aug. 19, 2013, at 4:3-5. BMO specifically states that a stay is supported by the remaining active defendants in this and the other two adversary proceedings, the Internal Revenue Service, the Franchise Tax Board, Stefanie Salyer and Caroline Salyer and their respective trusts, and Cary Collins. Given these circumstances, and in light of the factors the court is to consider in considering whether to stay civil litigation,[1] especially the potential prejudice to the respective parties and the efficient use of judicial resources, the court will grant the motion.**

**The motion party is to submit an appropriate order. No appearance is necessary.**

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**1 See Keating v. Office of Thrift Supervision, 45 F.3d 322, 324-25 (9th Cir. 1995).**

25. 09-29162-D-11 SK FOODS, L.P.
11-2340 TJD-7
BANK OF MONTREAL V. COLLINS ET AL

MOTION TO STAY ADVERSARY PROCEEDING
8-19-13 [377]

**Final ruling:**

**This is the motion of the plaintiff in this adversary proceeding, Bank of Montreal, as Administrative Agent ("BMO") to stay this adversary proceeding for an indefinite period of time. BMO has filed similar motions, also on this calendar, in two other adversary proceedings in the SK Foods chapter 11 case. The motion was properly served and no opposition has been filed. BMO contends the adversary proceeding should be stayed because litigation pending in the United States District Court for this district may resolve or narrow the issues in this proceeding. In addition, a stay would free the parties to devote their time and resources to ongoing settlement discussions. BMO represents that "[t]he remaining active litigants, including those that are involved in the [district court] proceedings, support a stay of these proceedings . . . ." Motion to Stay Adversary Proceeding, filed Aug. 19, 2013, at 4:3-5. BMO specifically states that a stay is supported by the remaining active defendants in this and the other two adversary proceedings, the Internal Revenue Service, the Franchise Tax Board, Stefanie Salyer and Caroline Salyer and their respective trusts, and Cary Collins. Given these circumstances, and in light of the factors the court is to consider in considering whether to stay civil litigation,[1] especially the potential prejudice to the respective parties and the efficient use of judicial resources, the court will grant the motion.**

**The motion party is to submit an appropriate order. No appearance is necessary.**

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**1 See Keating v. Office of Thrift Supervision, 45 F.3d 322, 324-25 (9th Cir. 1995).**

26. 13-27170-D-7 DALE HACKNEY
RCO-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
8-12-13 [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 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.**

27. 13-29077-D-7 JESSE/ANDRIA MONSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 8-13-13 [13]
U.S. BANK, N.A. VS.

**Final ruling:**

**This matter is resolved without oral argument. This is U.S. Bank, 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.**

28. 12-39878-D-7 DAVID/RENEE SMITH — MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
LR-2 — 8-5-13 [85]

**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 Application for Examination of Debtors Pursuant to Rule 2004 is supported by the record. As such the court will grant the Application for Examination of Debtors Pursuant to Rule 2004 and issue an order from chambers. No appearance is necessary.**

29. 12-39878-D-7 DAVID/RENEE SMITH — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
LR-3 — 8-5-13 [88]

**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 for Extension of Time for Filing Complaint Objecting to Debtors' Discharge Under 11 U.S.C. § 727 and Dischargeability of a Debtor Under U.S.C. § 523 is supported by the record. As such the court will grant the Motion for Extension of Time for Filing Complaint Objecting to Debtors' Discharge Under 11 U.S.C. § 727 and Dischargeability of a Debtor Under U.S.C. § 523. Moving party is to submit an appropriate order. No appearance is necessary.**

30. 13-28282-D-7 KEVIN/PAMELA WILLIAMS — MOTION TO COMPEL ABANDONMENT
CLH-1 — 8-20-13 [25]

**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.**

31. 13-28786-D-7 ROBERT/GUADALUPE BOCO — MOTION FOR RELIEF FROM AUTOMATIC STAY
BER-1
FINANCIAL CENTER CU VS.
8-15-13 [11]

**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.**

32. 13-24087-D-7 LEO UNGUI AND VALARIE HARPER-UNGUI — MOTION TO DEFER TIME PERIOD FOR FILING OF REAFFIRMATION AGREEMENT AND/OR MOTION TO DELAY DISCHARGE
SAG-1
7-21-13 [23]

33. 13-29288-D-7 DONALD/DEBORAH MANZER — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBB-1
BANK OF AMERICA, N.A. VS.
8-21-13 [11]

**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.**

34. 13-25791-D-7 SAMUEL THOMPSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JJW-3
JAVA DETOUR NORCAL, LLC VS.
8-23-13 [62]

35. 13-30793-D-7 CHAD/CARINA SCHUMACHER — MOTION TO COMPEL ABANDONMENT
RAC-1 — 8-19-13 [7]

**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.**

36. 12-29195-D-7 PEW FOREST PRODUCTS — MOTION FOR COMPENSATION FOR GONZALES AND SISTO LLP, ACCOUNTANT(S), FEES: $1,161.80, EXPENSES: $0.00
TAA-6 — 8-21-13 [148]

**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.**

37. 13-21595-D-7 PATRICIA CUNNINGHAM — CONTINUED MOTION FOR SUBSTITUTION OF DECEASED PARTY
JT-5 — 6-18-13 [46]

**Final ruling:**

**This motion was granted by order entered August 26, 2013. Matter removed from calendar. No appearance is necessary.**

38. 13-21595-D-7 PATRICIA CUNNINGHAM — OBJECTION TO HOMESTEAD EXEMPTION
PA-5 — 7-31-13 [75]

**Tentative ruling:**

**This is the trustee's objection to the debtor's claim of a homestead exemption.[1] The debtor's successor in interest has filed opposition, and the trustee has filed a reply. For the following reasons, the objection will be sustained.**

**Under California law, the proceeds of a forced sale of a judgment debtor's exempt homestead are exempt for a period of six months after the time the judgment debtor receives them. Cal. Code Civ. Proc. § 704.720(b). (Unless otherwise noted, statutory references are to the California Code of Civil Procedure.) Where the exempt proceeds are used toward the purchase of a new dwelling within the six-month period, the new dwelling qualifies as a homestead. § 704.710(c). If, however, the judgment debtor fails to reinvest the proceeds in a new dwelling within the six-month period, he or she forfeits the homestead exemption, Wolfe v. Jacobson (In re**

Jacobson), 676 F.3d 1193, 1198 (9th Cir. 2012), and the proceeds are property of the bankruptcy estate. Id. at 1197.

The trustee is correct that Jacobson governs the outcome of this objection. In that case, the debtor filed a chapter 7 petition to stop a judgment creditor from pursuing a judicial sale of her residence in state court. The debtor claimed the residence as exempt under § 704.720. The judgment creditor then obtained relief from stay to continue with his judicial sale, and the debtor's residence was sold by the county sheriff, who paid the debtor the portion of the proceeds equivalent to the amount of her homestead exemption. The debtor did not reinvest the proceeds in a new residence within the six-month period.

The court held that the proceeds "lost their exempt status as a result." Jacobson, 676 F.3d at 1198-99. The court recognized the argument the debtor's successor in interest makes here – that bankruptcy exemptions are fixed as of the date of the petition, but added that bankruptcy exemptions are determined "in accordance with the state law 'applicable on the date of filing.'" Id. at 1199, citing 11 U.S.C. § 522(b)(3)(A). "And 'it is the entire state law applicable on the filing date that is determinative' of whether an exemption applies." Id. (citation omitted). The court concluded that "[i]n this case, the entire state law includes a reinvestment requirement for the debtor's share of the homestead sale proceeds." Id., citing § 704.720(b).

The attempt by the debtor's successor in interest to distinguish Jacobson is weak. "In the case at bar the property has not been sold, and funds equal to the exemption have not been conveyed to the debtor. It should be pointed out that the six-month period does not begin to run until the proceeds are actually received by the judgment debtor." Opposition, filed Sept. 4, 2013, at 4:25-28 (emphasis omitted). All true. However, the trustee is in the process of selling the residence, and in the particular circumstances of this case, there would be no point in waiting for the six-month reinvestment period to run to see whether the debtor will reinvest the proceeds – she cannot do so because she has died. As the trustee points out, "[t]he law does not require the doing of a futile act." Ohio v. Roberts, 448 U.S. 56, 74 (1980).

Finally, the successor in interest cites a number of other cases, including some involving a debtor who died after the filing of a bankruptcy petition. At least one case supports the position of the successor in interest, In re Combs, 166 B.R. 417, 421 (Bankr. N.D. Cal. 1994). However, none of those cases is binding on this court, and all of them pre-date Jacobson. The court is persuaded they would not withstand analysis in light of Jacobson.

For the reasons stated, the objection will be sustained, and the court need not reach the trustee's alternative argument that the debtor was entitled to a homestead exemption of only $75,000 instead of the $175,000 she claimed.

The court will hear the matter.

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1 The trustee also initially objected to the debtor's exemption of certain personal property, but has conceded that, in light of a subsequent amended Schedule C filed by the debtor's successor in interest, that portion of the objection is moot.

39. 13-23621-D-7 PACIFIC ASSET MANAGEMENT, INC.
CONTINUED STATUS CONFERENCE RE: MOTION TO CONTINUE HEARING DATE
8-21-13 [48]

**CASE DISMISSED 4/18/13**

40. 13-29525-D-7 ANGELA BATES
CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-19-13 [5]

41. 13-30226-D-7 CHRISTIAN/VERONICA STARR
NMB-1
PROF-2012-S1 HOLDING TRUST I VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
9-3-13 [9]

**Final ruling:**

**The hearing on this motion is continued to November 13, 2013 at 10:00 a.m. per a stipulated order entered September 16, 2013. No appearance is necessary on September 18, 2013.**

42. 13-29030-D-7 WILLIAM/JANET CHENG
SLF-2
MOTION FOR ORDER REQUIRING DEBTORS TO SHUT DOWN BUSINESS
8-28-13 [31]

**Tentative ruling:**

**This is the motion of the chapter 7 trustee in this case (the "trustee") for an order requiring the debtors to shut down operation of their business known as Desert Sands Motel, at 623 16th Street, Sacramento, California (the "Business"), and any other businesses they are operating. The debtors have filed opposition. For the following reasons, the motion will be granted.**

**The trustee's allegation that the debtors are operating the Business is based on (1) their petition, on which they listed the nature of their debts as primarily business debts, indicated that they operate a business under a DBA (although they did not list the business name), and listed their address as the address of the Business, (2) their Schedule A, showing that they own the property at the address of the Business; (3) their 2011 federal tax return, showing that they operate a**

business named Desert Sands Motel, described as a "Room Rents Service," at the address of the Business; and (4) their testimony at the meeting of creditors, at which they testified that they own the motel and it is in operation. They also testified at the meeting of creditors that they have renters in their properties in San Jose and Folsom. Debtor Janet Cheng testified the debtors cannot afford insurance on the Business property because the cost is too high.

There is no authority in the Bankruptcy Code for a chapter 7 debtor to continue the operation of his or her business after the filing of the petition. Instead, it is the trustee who has the exclusive right to operate the business with court approval after notice and a hearing. 11 U.S.C. §§363(b) and (c), 721. At least for the present, the trustee does not believe it is in the best interest of the estate for him to operate the Business.

The debtors contend in opposition to the motion that William Cheng did not sign the petition commencing this case, and therefore, that the case should be dismissed. Their motion to dismiss the case is set for hearing on October 2, 2013, and the court will take up that issue at that time. Even if true, however, the allegation that William Cheng did not sign the petition is not relevant to the question whether the debtors should be permitted to continue to operate the Business, in contravention of the Bankruptcy Code. Both debtors appeared at the meeting of creditors; they did not inform the trustee that Mr. Cheng did not sign the petition or that they wanted the case dismissed. Particularly where, as here, there is evidence the operation of the Business is not covered by insurance, it is critical to the estate that the Business be shut down immediately.

The debtors also complain that the motion violated the court's local rules, specifically, LBR 9014-1(f)(1), because the trustee did not give 28 days' notice of the hearing. The rule does not require 28 days' notice; 14 days' notice is sufficient for a motion to which no written opposition will be required. The trustee's notice of hearing complied with LBR 9014-1(d)(3) in that it stated that no party-in-interest would be required to file written opposition, and it complied with LBR 9014-1(f)(2) in that more than 14 days' notice was given. The debtors also contend the trustee was required to personally serve the motion on the debtors; however, the bankruptcy rules permit service by mail. Fed. R. Bankr. P. 9014(b) and 7004(b).

The debtors next contend that shutting down the Business would deprive William Cheng, a 78-year old man in failing health, of his livelihood in favor of some invalid judgments. (As with their motion to terminate the employment of the trustee's counsel, also on this calendar, the debtors' opposition to this motion lists some of their allegations about a fraudulent deed of trust, wrongful foreclosure, and invalid judgments and judgment liens.) This is a factor the court may consider at the appropriate time in evaluating the debtors' motion to dismiss the case. For purposes of this motion, however, there is simply no authority for the proposition that a chapter 7 debtor may continue to operate his business in any circumstances, especially where, as here, the absence of insurance coverage exposes the trustee and the estate to loss and liability.

Finally, the debtors contend the trustee violated bankruptcy law by filing a copy of Schedule C of the debtors' 2011 federal income tax return as an exhibit in support of this motion. The debtors have not cited any particular bankruptcy or other statute preventing a trustee from filing a copy of a debtor's tax return, and the court notes that the trustee was careful to redact the debtor's social security number, as required. Further, the debtors' bankruptcy petition, schedules, and

**Statement of Financial Affairs are woefully short on information – the debtors failed to disclose the name of the business, failed to disclose any of its assets, and failed to disclose the existence of the Business itself, except by reference to an unnamed "DBA." The trustee utilized the tax return for the sole purpose of establishing that the debtors are in fact operating the Business, a fact they now admit.**

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

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| 43. | 13-28732-D-7<br>RWH-1 | RONALD CORILONI | MOTION TO AVOID LIEN OF BOUNTY RECOVERY<br>8-29-13 [13] |

**Final ruling:**

**This is the debtor's motion to avoid a judicial lien held by Bounty Recovery ("Bounty"). The motion will be denied for two reasons. First, the proof of service is insufficient to permit the court to conclude that the motion was served in strict compliance with Fed. R. Bankr. P. 7004(b), as required by Fed. R. Bankr. P. 9014(b). The moving party served Bounty (1) at a post office box address with no attention line; and (2) in care of a named individual, Lee Wetherbee, at a post office box address. This information is insufficient to enable the court to determine whether Bounty is a sole proprietorship or a corporation, partnership, or other unincorporated association, but either way, the proof of service contains insufficient information to support a conclusion that service was made in compliance with the applicable subdivision of Rule 7004(b).**

**If Bounty is a corporation, partnership, or other unincorporated association, service must be addressed to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). If Lee Wetherbee in fact occupies one of these positions, service may have been proper. If Lee Wetherbee in fact does not occupy one of these positions, service was improper for failure to address service to the attention of an officer, managing or general agent, or agent for service of process. (The court notes, however, that Bounty is not registered with the California Secretary of State as an active corporation, partnership, or limited liability company, and does not have a registered agent for service of process in California.)**

**If Bounty is a sole proprietorship owned by Lee Wetherbee (or someone else), service must be made in the manner required for service on an individual; namely, service must be mailed to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession. Rule 7004(b)(1). Here, instead, service was mailed to a post office box.**

**Second, the notice of hearing is a notice pursuant to LBR 9014-1(f)(2), and it appropriately states that opposition, if any, need not be in writing or filed prior to the hearing, but may be presented at the hearing. However, the notice earlier states that creditors, the trustee, or other parties in interest objecting to the relief sought are to file objections with the clerk of the court and to serve them on the debtor's attorney. This information conflicts with LBR 9014-1(f)(2)(C), which provides explicitly that when fewer than 28 days' notice is given, no party-**

**in-interest shall be required to file written opposition. The extra language in the notice stating that objections are to be filed and served may have operated to discourage parties-in-interest from appearing at the hearing.**

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

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| 44. | 13-29346-D-7 | RYAN/LORENA O'MALLEY | CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE<br>7-15-13 [5] |
| 45. | 10-42050-D-7<br>GJH-3 | VINCENT/MALANIE SINGH | MOTION FOR COMPENSATION BY THE HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY(S), FEES: $59,044.50, EXPENSES: $374.00<br>8-28-13 [431] |
| 46. | 12-37254-D-7<br>GJH-3 | CHRISTOPHER/LAURA WESTLAKE | MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY(S), FEES: $6,752.50, EXPENSES: $107.94<br>8-27-13 [48] |

47. 09-29162-D-11 SK FOODS, L.P. MOTION TO EMPLOY BOWLES AND
SH-227 VERNA, LLP AS SPECIAL COUNSEL
8-29-13 [4436]

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

**Tentative ruling:**

**This is the trustee's motion to employ the law firm of Bowles & Verna LLP ("Bowles & Verna") as his special counsel. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling. The court is not prepared to grant the motion at this time, regardless of whether or not the motion is opposed, because the supporting declaration of Richard T. Bowles is insufficient to allow the court to determine whether Bowles & Verna holds or represents an interest adverse to the estate, and whether it is a disinterested person, as required by 11 U.S.C. § 327(a). The declaration states:**

> **I have performed a conflicts check upon the Debtors. Based upon this review, I have determined that I do not hold or represent any interest adverse to the Trustee or the Debtors' estates. Moreover, I do not have any connection with the Debtors, their creditors, equity security holders, or any other parties-in-interest, or their respective attorneys and accountants, or the United States Trustee or any person employed in the Office of the United States Trustee.**
>
> **Based upon the foregoing, I believe that I am a disinterested person as defined in Section 101(14) of Title 11 of the United States Code. I am not associated nor affiliated with the Debtors, their affiliates, their creditors, or any other party in interest or their respective attorneys and accountants or any person employed in the Office of the United States Trustee. I have no pre-petition claim against the Debtors.**

**Declaration of Richard T. Bowles, filed August 29, 2013, at 1:21-2:3.**

**The trustee is not proposing to employ Richard T. Bowles alone; he proposes to employ the firm of Bowles & Verna. Thus, the trustee must submit evidence supporting the conclusion that the firm, and not just Mr. Bowles, is a disinterested person and does not hold or represent an interest adverse to the estate.**

**The court will continue the hearing to allow the trustee to supplement the evidentiary record. The court will hear the matter.**

48. 11-26466-D-13 STEVE JOHNSON

CONTINUED STATUS CONFERENCE RE: MOTION TO CONTINUE HEARING DATE 8-21-13 [59]

**CASE DISMISSED 5/3/11**

49. 11-44395-D-7 LINDA MYERS
MDM-1
COAST CAPITAL INCOME FUND, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-30-13 [70]

**Final ruling:**

**The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor received her discharge on February 13, 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 finds a hearing is not necessary as to the trustee because the trustee has filed his final report and will grant relief from stay as to the trustee and the estate by minute order. There will be no further relief afforded. No appearance is necessary.**

50. 13-25791-D-7 SAMUEL THOMPSON

CONTINUED OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION FILED BY JEZZY PAYNE AND AMBER MCCONNELL
7-16-13 [48]

51. 13-31597-D-11 FREDRICK HODGSON
BSA-1

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY O.S.T.
9-13-13 [16]