UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 16, 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.

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1. 10-31603-D-7 JKU-2 — ALLEN/SHERALYN FISHER — MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC. 9-5-13 [29]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Beneficial California Inc. ("Beneficial"). The motion will be denied because the moving parties failed to serve Beneficial in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. 9014(b). The moving parties served Beneficial (1) in care of the attorneys who obtained its abstract of judgment; and (2) to CT Corporation Systems as its agent for service of process. The first method was a good idea, see All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 94 (9th Cir. BAP 2007) (Klein, J., dissenting), but by itself, it was not sufficient. Id. at 92, citing Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (9th Cir. BAP 2004).

The second method was insufficient because where service is made on a corporation to the attention of an agent for service of process, it must be an agent authorized by appointment or by law to receive service of process, Fed. R. Bankr. P. 7004(b)(3), whereas the California Secretary of State's office shows Beneficial as a

"merged out" corporation. Under California law, a merger constitutes the surrender by the merged out corporation of its right to engage in intrastate business within this state, see Cal. Corp. Code § 2113(a), and service must be made by delivery to the Secretary of State. Id. at § 2114(b). (Under Fed. R. Bankr. P. 7004(b)(3), a moving party also has the option of service to the attention of an officer, managing or general agent of the surviving corporation, the name of which may be obtained from the Secretary of State. See California Secretary of State Debra Bowen, Business Search Field Descriptions and Status Definitions, http://www.sos.ca.gov/business/be/cbs-field-status-definitions.htm) (last visited Oct. 2, 2013).)

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

2.	13-28904-D-7 HAW-1	FRANK ZIVKOVICH AND WANDA CHRISTENSEN	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A 9-12-13 [13]

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.

3.	13-29909-D-7 RK-1	WARREN/ALYS DAY	MOTION TO AVOID LIEN OF RETAILERS CREDIT ASSOCIATION OF GRASS VALLEY, INC. 9-17-13 [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. 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.

4.	10-47515-D-7 PD-1 HSBC BANK USA, N.A. VS.	VINCE LEPARA AND RHONDA LEPERA	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-12-13 [91]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of HSBC for relief from stay. The debtors received their discharge on February 22, 2011 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Although the debtors have filed opposition to the motion, as they have received their discharge the stay is no longer in effect as to them. Accordingly, the motion will be denied as to the debtors as moot. As the trustee has not opposed the motion, 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.

5. 12-33722-D-7 RICHARD/ETELVINA CALDRON MOTION TO SELL
SLF-8 9-18-13 [66]

Final ruling:

This is the trustee's motion to sell the non-exempt interest in the debtors' business, Caldron's Jewelers, to the debtors for $7,500. The court is not prepared to consider the motion at this time because the notice of hearing, which is the only document served on creditors, contains insufficient information to enable creditors to determine whether to oppose the motion or whether to overbid. The motion itself proposes that any overbidder must agree to purchase the assets on the identical terms as in the debtors' agreement with the trustee, except as to the price; that proposed overbidders must qualify to bid by tendering a cashier's check of at least $5,625 at or before the hearing; that the first overbid must be at least $27,500 ($5,000 more than the sum of the debtors' purchase price plus their exemption claim); and that the balance of the purchase price must be paid by cashier's check within five days after the hearing date.

The problem is that these terms were not included in the notice of hearing, which stated only that the debtors' purchase price would be $7,500; that the sale would be subject to overbidding at the hearing, and that anyone wishing to bid should appear at the hearing. Further, the notice does not sufficiently describe the assets proposed to be sold. Although it describes the business as the debtors' jewelry business, it does not include the name of the business or any indication of its assets.

The court will continue the hearing to November 13, 2013, at 10:00 a.m., the trustee to file and serve a notice of continued hearing, to include this additional information, no later than October 30, 2013. The notice of continued hearing shall be pursuant to LBR 9014-1(f)(1) or (f)(2), at the trustee's election, depending on the amount of notice given.

The hearing will be continued by minute order. No appearance is necessary on October 16, 2013.

6. 10-47422-D-7 DENNIS/SHERYL LANCASTER MOTION TO COMPROMISE
13-2028 HSM-1 CONTROVERSY/APPROVE SETTLEMENT
FARRAR V. CORSARO AGREEMENT WITH ROBERT CORSARO
9-16-13 [30]

Final ruling:

This is the trustee's motion for approval of a compromise of his controversy with the defendant in this action. The motion will be denied for the following reasons: (1) the moving party served only the defendant and the United States Trustee, and failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(3); and (2) the proof of service does not bear evidence of signature in any manner authorized by LBR 9004-1(c)(1)(B).

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

7. 13-20823-D-11 MELVIN/DARLENE SHIMADA
EGS-1
BAYVIEW LOAN SERVICING, LLC
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-13 [180]

8. 13-20823-D-11 MELVIN/DARLENE SHIMADA
MHK-7

CONTINUED MOTION FOR ORDER TO SHOW CAUSE
8-15-13 [139]

9. 06-22532-D-7 RIO MORALES
12-2587 DNL-1
DIDRIKSEN V. LICHEN, INC.

MOTION FOR SUMMARY JUDGMENT
9-16-13 [25]

Tentative ruling:

This is the motion of plaintiff Susan Didriksen, the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against defendant Lichen, Inc. ("Lichen"). Lichen has filed opposition, and the trustee has filed a reply. For the following reasons, the hearing will be continued for further briefing.

Some of the facts are undisputed – they are as follows. Prior to October 15, 2007, Lichen held a second position deed of trust against real property of the debtors, Rio Antonio Morales and Dana Patricia Morales (the "debtors"), located at 1240 Promontory Point Drive, El Dorado Hills, California (the "Property"). On October 15, 2007, Lichen, having obtained relief from stay in the chapter 7 case, foreclosed on the Property, and soon after, recorded a trustee's deed by which it took title to the Property. On March 4, 2010, Deutsche Bank National Trust Company, which held the senior deed of trust against the Property, completed its own foreclosure, thereby wiping out Lichen's ownership interest in the Property.

Several years earlier, the debtors had hired Newcastle Homes ("Newcastle") to build a home for them on the Property; in 2003, disputes having arisen between them, Newcastle sued the debtors, and the debtors cross-complained against Newcastle and various subcontractors. The debtors filed a chapter 11 petition in this court on July 13, 2006. Soon after, the parties settled their differences, and this court approved their compromise, pursuant to which Newcastle and the subcontractors paid

the debtors and their attorneys a total of $406,000. After payment of attorney's fees and costs, the net settlement proceeds, $194,870 (the "Settlement Proceeds"), were deposited in a blocked, interest-bearing account held by the debtors' bankruptcy attorney, not to be disbursed until further court order.

On November 1, 2010, on motion of the United States Trustee, this court converted the debtors' chapter 11 case to one under chapter 7 of the Bankruptcy Code, and the trustee was appointed as chapter 7 trustee. On September 26, 2012, she commenced this adversary proceeding against Lichen, seeking (1) a determination that, by reason of its foreclosure and by operation of California's anti-deficiency statute and one form of action rule, Lichen has waived any rights it may have had to the Settlement Proceeds (first claim for relief); and (2) a determination that, by reason of § 552 of the Bankruptcy Code, Lichen has no lien against or interest in the Settlement Proceeds (second claim for relief). By this motion, the trustee seeks summary judgment on her second claim for relief; thus, the impact of Lichen's foreclosure will not be considered in this ruling.[1]

Section 552(a) provides that, with certain exceptions, property acquired post-petition by the debtor or the bankruptcy estate is not subject to any lien resulting from any pre-petition security agreement. However, if the security interest created by a pre-petition agreement extended to property of the debtor acquired pre-petition, and to "proceeds, products, offspring, or profits of such property," then the security interest extends to such proceeds, products, offspring, or profits of such property acquired post-petition, to the extent provided by the security agreement and applicable nonbankruptcy law. § 552(b)(1).[2] These exceptions are, in turn, subject to the exception that the court may order otherwise based on the equities of the case. Id.

"[T]he purpose of § 552 is to permit a debtor 'to gather into the estate as much money as possible to satisfy the claims of all creditors'; but § 552(b) 'balances the Code's interest in freeing the debtor of prepetition obligations with a secured creditor's rights to maintain a bargained-for interest in certain items of collateral. It provides a narrow exception to the general rule of 552 (a).'" Financial Sec. Assurance v. Days Cal. Riverside Ltd. Pshp. (In re Days Cal. Riverside Ltd. Pshp.), 27 F.3d 374, 375 (9th Cir. 1994), citing In re Bering Trader, Inc., 944 F.2d 500, 502 (9th Cir. 1991). Subsection 552(b) "allows lenders to follow their legitimate interests in transmuted forms of their collateral; a security interest in a receivable generated prepetition is not lost in bankruptcy simply because it was paid in cash after filing." In re Las Vegas Monorail Co., 429 B.R. 317, 327 (Bankr. D. Nev. 2010).

Thus, the question is whether the Settlement Proceeds are "proceeds," as that term is used in § 552(b), of property that was Lichen's collateral prior to the filing of the chapter 11 case.[3] The trustee's argument is built on the premise that Lichen's deed of trust created a security interest in the real property only. "Here, the collateral at issue is real property, not personal property." Trustee's Memorandum of Points and Authorities, filed Sept. 16, 2013 ("Memo"), at 6:9-10. She contends the Settlement Proceeds are not "proceeds" of the real property; that the Settlement Proceeds were acquired by the debtors post-petition; and thus, that under § 552(a), the Settlement Proceeds are not subject to any lien resulting from the deed of trust.

The trustee's analysis is too narrow for two reasons. First, it overlooks the broad definition of "proceeds" in Revised Article 9 of the California Commercial Code, as discussed below. Second, the trustee's argument assumes the only

collateral Lichen acquired by way of its deed of trust was the real property. The trustee cites In re Northview Corp., 130 B.R. 543, 548 (9th Cir. BAP 1991), for the proposition that "proceeds," for purposes of § 552(b), can only derive from pre-petition personal property and not from pre-petition real property, as well as a number of cases stating that "proceeds" are what results when property in one form is "converted into" property in another form. Thus, she concludes that because Lichen's pre-petition collateral was real property, and because that real property was not "converted into" the Settlement Proceeds, the Settlement Proceeds are not "proceeds" of Lichen's collateral. The problem is that the Settlement Proceeds are the "proceeds" of a pre-petition personal property asset; namely, the debtors' claims or causes of action against Newcastle. Thus, personal property was converted into personal property, and the question is whether Lichen, by way of its deed of trust, obtained a security interest in those claims or causes of action.[4]

Lichen points to language in its deed of trust whereby the debtors assigned to Lichen's predecessor-in-interest certain personal property assets; namely, all "Miscellaneous Proceeds," defined in the deed of trust as:

> any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

Trustee's Ex. A, at 2. In Lichen's view, the Settlement Proceeds fall within the deed of trust's definition of "Miscellaneous Proceeds," and by way of the operative language of assignment in the deed of trust, "All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender" (id. at 8), the Settlement Proceeds were absolutely and irrevocably assigned to Lichen's predecessor, and therefore, belong to Lichen as a matter of law.

In the court's view, the definition of "Miscellaneous Proceeds" in the deed of trust does not cover the Settlement Proceeds. First, it would stretch the language too far to view the debtors' construction defect claims against Newcastle as claims on account of misrepresentations or omissions as to the value or condition of the property, as Lichen argues. Further, "damage" to the property and "defects" in construction of the property are two different things. Oxford Dictionaries defines "damage" as "physical harm caused to something in such a way as to impair its value, usefulness, or normal function,"[5] whereas "defect" is "a shortcoming, imperfection, or lack."[6] Phrased another way, a defect is something that is inherent in something from the moment of its creation, whereas damage represents a change in the state of something already existing. Thus, the court does not view "Miscellaneous Proceeds," as defined in the deed of trust, as including the Settlement Proceeds.

However, Lichen also relies on Cal. Comm. Code § 9102(a)(64), which defines "proceeds" as any of the following:

> (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.
> (B) Whatever is collected on, or distributed on account of, collateral.
> (C) Rights arising out of collateral.
> (D) To the extent of the value of collateral, claims

> arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.
>
> (E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

Subdivisions (D) and (E) make a distinction between "defects in" collateral and "damage to" collateral, as the court does with respect to the deed of trust definition of "Miscellaneous Proceeds." However, these subdivisions bring claims arising out of both defects in collateral and damage to collateral within the definition of "proceeds." It seems clear that if this definition applies to and governs in this case, the Settlement Proceeds, as the proceeds of the debtors' pre-petition construction defect claims against Newcastle, are "proceeds" of Lichen's collateral, within the meaning of § 552(b).[7] The question, then, is whether this definition governs the determination of what "proceeds" Lichen took a security interest in under the deed of trust; that is, whether Lichen acquired, through its deed of trust, a security interest in "proceeds," as defined in the Commercial Code, either as a matter of real property law or on some other basis. The court has already determined that "Miscellaneous Proceeds," as defined in the deed of trust, does not include the Settlement Proceeds. Thus, the court must determine whether the more expansive definition of "proceeds" in § 9102(a)(64) applies here. The parties have not sufficiently addressed this issue, and the court intends to continue the hearing to allow for further briefing.

Finally, the trustee contends that even if Lichen's security interest created under the deed of trust extends to the Settlement Proceeds, the court should order otherwise, based on the equities of the case, as permitted by § 552(b)(1).

> [T]he equities of the case proviso is a legislative attempt to address those instances where expenditures of the estate enhance the value of proceeds which, if not adjusted, would lead to an unjust improvement of the secured party's position. In such cases, Congress intended for courts to limit the secured party's interest in the proceeds according to the equities of the case so as to avoid prejudicing the unsecured creditors.

Toso v. Bank of Stockton (In re Toso), 2007 Bankr. LEXIS 4889, *41-42 (9th Cir. BAP 2007), quoting In re Cross Baking Co., 818 F.2d 1027, 1033 (1st Cir. 1987). Thus, "'revenue generated by the operation of a debtor's business, post-petition, is not considered proceeds if such revenue represents compensation for goods and services rendered by the debtor in its everyday business performance. . . . Revenue generated post-petition solely as a result of a debtor's labor is [also] not subject to a creditor's pre-petition interest.'" Las Vegas Monorail, 429 B.R. at 345 (citation omitted).

The trustee's argument is that the Settlement Proceeds "only exist because of the pre-petition actions and expenses of the Debtors and the post-petition actions and expenses of the estate." Memo, at 8:9-10. The trustee has cited no authority for the proposition that the pre-petition efforts of the debtor are part of the analysis. Further, there is virtually no evidence of the amount of effort that went into the settlement after the chapter 11 case was filed, and the settlement of a pre-petition lawsuit is a far cry from the types of situations in which the courts have applied the equities exception. See Toso, 2007 Bankr. LEXIS 4889, *43-44 [estate funds that were not subject to the bank's security interest were used to

preserve the debtor's asparagus beds, which were the bank's collateral, and to cultivate the next year's crop]; In re Granda, 144 B.R. 697, 698 (Bankr. W.D. Pa. 1992) [although bank had lien on debtor's pre-petition contract to construct a building, all of the debtor's work constructing the building was done post-petition]. Thus, the court will not apply the equities exception in this case.

The court will hear the matter.

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1 Lichen's contention that the trustee has abandoned her first claim for relief by not including it in this motion is incorrect. Fed. R. Civ. P. 56(a), incorporated herein by Fed. R. Bankr. P. 7056, expressly provides for a motion for partial summary judgment.

2 Phrased more simply, "11 U.S.C. § 552(a) generally cuts off a secured creditor's lien on collateral acquired after the commencement of the case. However, § 552(b)(1) creates an exception for 'proceeds' of pre-petition collateral to the extent provided 'by applicable law.'" In re Delco Oil, Inc., 365 B.R. 246, 250 (Bankr. M.D. Fla. 2007). To prevail under § 552(b)(1), a creditor must show "that its security interest, created by [its security agreement], extends to property of the Debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property." Id.

3 The trustee also analyzes the other terms used in § 552(b), "products," "offspring," and "profits"; however, Lichen does not contend the Settlement Proceeds fall into any of these categories.

4 The term "deed of trust" is not by definition limited to conveying a security interest in real property, as the trustee's argument suggests. Instead, a deed of trust may convey security interests in both real and personal property. See Northview Corp., 130 B.R. at 544.

5 Website of Oxford Dictionaries, http://english.oxforddictionaries.com/search?q=damage&region =us&contentVersion=US (last visited Oct. 11, 2013).

6 Website of Oxford Dictionaries, http://english.oxforddictionaries.com/search?q=defect&region= us&contentVersion=US (last visited Oct. 11, 2013).

7 Absent good reasons not to, "we . . . start with the presumption that 'proceeds' in Section 552(b) should be construed consistently with the same term as in the UCC." In re Las Vegas Monorail Co., 429 B.R. at 343 [construing financing agreement covering personal property assets and their proceeds].

10. 06-22532-D-7 RIO MORALES — MOTION FOR SUMMARY JUDGMENT
12-2587 RSK-1 — 9-18-13 [32]
DIDRIKSEN V. LICHEN, INC.

Tentative ruling:

This is the motion of defendant Lichen, Inc. ("Lichen") for summary judgment against plaintiff Susan Didriksen, the trustee in the underlying chapter 7 case (the "trustee"). The trustee has filed opposition, and Lichen has filed a reply.

The court incorporates herein its ruling on the trustee's motion for summary judgment, DC No. DNL-1, also on this calendar. As the issues addressed in that ruling are also at issue in this motion, the hearing on this motion will be continued for further briefing. Lichen's motion adds an issue that was not addressed by the trustee in her motion – concerning Lichen's foreclosure as implicating the antideficiency statute and one form of action rule. However, even if Lichen is correct that its claim survived its foreclosure, Lichen must still demonstrate it had a lien against the causes of action against Newcastle and that its lien survived post-petition, despite the operation of § 552(a) of the Code. As those are the issues at stake in the trustee's motion for summary judgment, the hearing on Lichen's motion will also be continued.

The court will hear the matter.

11. 12-35735-D-11 DAVID CAROTHERS — MOTION FOR ORDER APPROVING THE STIPULATION RE: TREATMENT OF CLAIM UNDER DEBTOR'S PROPOSED CHAPTER 11 PLAN OF REORGANIZATION AND TERMINATING THE AUTOMATIC STAY
PD-1 — 9-11-13 [257]

12. 13-30137-D-7 BISI THOMAS — MOTION TO COMPEL ABANDONMENT
TBK-1 — 9-16-13 [14]

13. 08-26338-D-7 DBJ-3 — JANICE POYTHRESS — MOTION TO COMPEL ABANDONMENT 9-17-13 [108]

Final ruling:

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

14. 13-20539-D-7 JMH-2 — RICHARD CRANSTON — MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S), FEE: $924.00, EXPENSES: $501.75 9-9-13 [32]

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 compensation for West Auctions, Inc. is supported by the record. As such the court will grant the motion for compensation for West Auctions, Inc. The moving party is to submit an appropriate order. No appearance is necessary.

15. 13-29446-D-7 GK-1 — MOHAMMED KHALIL AND MAMUNA BUKSH — MOTION TO COMPEL ABANDONMENT 9-9-13 [14]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to 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.

16. 12-32054-D-11 DCJ-2 — AJW PROPERTIES, LLC — MOTION FOR COMPENSATION FOR DAVID C. JOHNSTON, DEBTOR'S ATTORNEY(S), FEE: $14,366.00, EXPENSES: $0.00. 9-18-13 [112]

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.

17.	13-26954-D-7 UST-1	DEVIN/MICHELLE DUKE	MOTION FOR ASSESSMENT OF FINES AGAINST, AND FOR FORFEITURE OF FEES, BY DONNA L. CARDOZA 8-27-13 [25]
18.	13-31754-D-11	VICTOR/SVETLANA PARSHIN	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-6-13 [1]
19.	13-30659-D-7 MAS-1	ALBERT/KAREN BURCELL	MOTION BY MICHAEL A. SCHEIBLI TO WITHDRAW AS ATTORNEY 9-18-13 [13]
20.	13-31161-D-7	OLEKSIY/LYUDMILA PECHONCHYK	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 8-23-13 [5]

21. 09-29162-D-11 SK FOODS, L.P. MOTION TO EMPLOY PLATINUM
SH-229 ADVISORS, LLC AS CONSULTANT(S)
9-12-13 [4448]

Tentative ruling:

This is the trustee's motion to employ the firm of Platinum Advisors ("Platinum") as his consultants. The motion was brought pursuant to LBR 9014-1(f)(1), and no opposition has been filed. However, the court is not prepared to grant the motion at this time because the supporting declaration of Darius Anderson is insufficient to allow the court to determine whether Platinum 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. [Describes brief acquaintance with the trustee 12 years ago.] Otherwise, 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 Darius Anderson, filed September 12, 2013, at 1:23-2:7.

The trustee is not proposing to employ Darius Anderson alone; he proposes to employ the firm of Platinum Advisors. Thus, the trustee must submit evidence supporting the conclusion that the firm, and not just Mr. Anderson, 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.

22. 13-31762-D-7 JONATHAN/AISHA SMITH MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-6-13 [5]

23. 13-27667-D-7 JOHNNY DUANGSAWAT MOTION TO COMPEL
JCK-3 9-9-13 [26]

Tentative ruling:

This is the debtor's motion for an order directing the Los Angeles County Sheriff's Department (the "Sheriff's Dept.") to turn over garnished funds in the amount of $5,105.16 to the debtor, "pursuant to 11 U.S.C. § 362(a) and § 522." No party-in-interest has filed opposition. However, that does not necessarily entitle the moving party to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Having examined the moving papers, the court will grant the motion in part.

The motion and supporting declaration state that funds in the amount of $1,741.70 were garnished from the debtor's wages after his petition commencing this case was filed; hence, apparently, the reference to § 362(a). The remaining funds, $3,363.46, were garnished pre-petition. The court denied the debtor's earlier motion for this same relief on the ground that the motion provided no basis for turnover of the portion of the funds garnished pre-petition, other than that the debtor had listed and claimed as exempt $5,200 in garnished wages. The court ruled that, whereas the claim of exemption would settle the question of the right to the funds as between the debtor and the bankruptcy estate (once the deadline for objections to exemptions had passed, as it now has), it would not settle the question of the rights of the debtor vis-a-vis the garnishing creditor, Portfolio Recovery Associates ("Portfolio"). As the debtor had not addressed that question, the court denied the motion as to the $3,363.46. (The motion was denied as to the $1,741.70 because of service defects, which have been corrected with this new motion.)

The new motion addresses this issue as follows: "to the extent Portfolio Recovery Assoc. has any judicial lien on the $3,363.46 garnished prior to the bankruptcy filing, that lien is now avoided per 11 USC §522(f)." Motion to Compel, filed Sept. 9, 2013, at 1:25-26. The problem is that § 522(f) provides that a debtor may avoid a judicial lien that impairs an exemption to which the debtor would have been entitled, not that such a lien is automatically avoided by the filing of the bankruptcy petition. See also Fed. R. Bankr. P. 4003(d) [proceeding to avoid a lien under § 522(f) shall be by motion]. The debtor in this case has not filed a motion to avoid Portfolio Recovery's judicial lien on the funds garnished pre-petition; thus, the lien continues to encumber the funds, and there is no basis on which the court can direct the Sheriff's Dept. to release them to the debtor.

The court recognizes that Portfolio Recovery has not responded to this motion, and thus, it may be willing to stipulate to avoidance of its lien. Absent that, however, and absent a motion by the debtor to avoid the lien, the court will not direct the Sheriff's Dept. to release the $3,363.46, but will grant the motion as to the $1,741.70 garnished in violation of the automatic stay.

The court will hear the matter.

24. 13-31669-D-7 JRR-1 — JOHN ALVES AND TERRI QUILITZSCH-ALVES — MOTION TO COMPEL ABANDONMENT 9-17-13 [10]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to 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.

25. 12-20571-D-7 12-2593 SMITH V. SAPPAL ET AL — PRITPAUL SAPPAL DNL-1 — MOTION TO AMEND 9-18-13 [61]

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 leave to amend complaint is supported by the record. As such the court will grant the motion for leave to amend complaint. Moving party is to submit an order consistent with the relief requested in the motion. No appearance is necessary.

26. 13-23371-D-11 — JUAN/MARGARITA RAMIREZ — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 3-13-13 [1]

27. 10-36676-D-7 12-2551 ACEITUNO V. PENINSULA CAPITAL GROUP, INC. — SUNDANCE SELF-STORAGE-EL DORADO LP GJH-2 — MOTION FOR ENTRY OF DEFAULT JUDGMENT 9-10-13 [34]

Final ruling:

This is the motion of the plaintiff, who is the trustee in the chapter 7 case in which this adversary proceeding is pending (the "trustee"), for entry of default judgment against the defendant, Peninsula Capital Group, Inc. ("Peninsula"). The motion was noticed under LBR 9014-1(f)(1), and is unopposed. The relief requested in the motion is supported by the record. As such, the court will grant the motion by minute order.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), cert. granted, 2013 WL 3155257 (June 24, 2013), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. In this action, the trustee seeks to recover unauthorized post-petition transfers, pursuant to § 549(a) of the Bankruptcy Code, rather than to recover fraudulent transfers. The court has found no authority for the proposition that the jurisdictional concerns raised by Bellingham extend to actions under § 549(a) action. However, for the sake of completeness, the court will address the matter as if Bellingham governed. The Bellingham court held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, Peninsula is a creditor in the underlying bankruptcy case. See Claim # 10, filed October 4, 2012. Accordingly, the court has authority to enter a final judgment on the claims asserted against Peninsula.

The moving party is to submit an appropriate form of judgment. No appearance is necessary.

28. 13-31576-D-7 MILLICENT BELSER — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
9-3-13 [5]

29. 10-30583-D-7 STEVEN LONG
13-2174
DIDRIKSEN V. ALMAS ET AL — MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-13-13 [13]

Final ruling:
This is the plaintiff's motion for entry of default judgment against the defendants in this adversary proceeding. No timely opposition has been filed, and the record in this proceeding supports the relief requested. The motion will be granted by minute order, the moving party to submit an appropriate judgment. No appearance is necessary.

30. 13-29183-D-7 SUSIE KIRK
MBB-1
THE BANK OF NEW YORK MELLON
VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-13 [27]

Final ruling:
This matter is resolved without oral argument. This is The Bank of New York Mellon'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.

31. 10-41788-D-7 SHARON LAN AU
SSA-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN S. ALTMAN FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S), FEE: $6,637.50, EXPENSES: $318.50
9-10-13 [100]

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.

32. 13-31591-D-7 NICHOLAS MARTIN

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-20-13 [9]

Final ruling:

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

33. 12-30792-D-7 RANDY/VALERIE PEW
PD-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-13 [132]

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 September 3, 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.

34. 13-21595-D-7 PATRICIA CUNNINGHAM
SW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-18-13 [104]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

35. 13-31195-D-7 AF-1 — GEM BARRIA — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY 9-2-13 [9]

Final ruling:

The hearing on this matter has been continued by stipulated order to November 13, 2013, at 10:00 a.m.

36. 09-26096-D-7 BHS-5 — TOP NOTCH LIMOUSINE AND EXECUTIVE SERVICES — OBJECTION TO CLAIM OF LINDA CASEY, CLAIM NUMBER 38 8-26-13 [154]

Tentative ruling:

This is the trustee's objection to the claim of Linda Casey (the "Claimant"), Claim No. 38 on the court's claims register. The claim is for $17,192; it asserts it is both an administrative claim and a claim entitled to priority under § 507(a)(4) of the Bankruptcy Code. The Claimant has filed opposition. For the following reasons, the objection will be sustained.

The trustee's objection is four-fold: (1) the claim does not indicate how the amount was arrived at; (2) it is not supported by documentation; (3) it purports to be a priority claim for commissions, under § 507(a)(4), but exceeds the amount allowed for such priority claims; and (4) it asserts the status of an administrative claim, but the Claimant did not file a request for an administrative claim before the administrative claims bar date in this case. The Claimant has filed a declaration in response, in which she testifies the claim was incurred between April 2, 2009, the date of the petition commencing this case, and September 11, 2009, the approximate date the business of the debtor was sold. Thus, the claim was incurred in the post-petition period, and does not qualify as a priority claim under § 507(a)(4).

This leaves the trustee's challenge to the claim as an administrative claim, based on the Claimant's alleged failure to file a request for an administrative claim before the bar date, and the trustee's challenges based on lack of detail about the claim amount and lack of documentation. First, as regards the bar date, the trustee's notice of the chapter 11 administrative claims bar date informed potential claimants that in order to assert a claim for goods or services provided to the debtor between April 2, 2009 and February 6, 2010 (when the case was converted to chapter 7), "you must file a proof of the administrative expense claim, with supporting documentation, on or before 60 days from the date of service of this [notice] [or by January 10, 2012]. Any proof of administrative expense claim filed after that date may result in the Court disallowing the claim in its entirety." Notice of Chapter 11 Administrative Claims Bar Date, filed Nov. 11, 2011, at 1:20-23. The claim that is the subject of this objection was filed June 21, 2010, well before the bar date.

The trustee complains, however, that the Claimant did not file a "request for an Administrative Claim and should be barred from doing so now." Objection to Claim, filed Aug. 26, 2013, at 2:6-7. A claimant who is not an attorney should be

able to rely on notices from the trustee as to the acceptable format for the filing of a proof or request for allowance of a claim. In this case, the trustee did not use the term "request for administrative claim" in his notice; instead, he twice used the term "proof of administrative expense claim." The Claimant had already asserted her claim in the form of a proof of claim that specifically claimed to be an "administrative claim" even before the notice went out. There was nothing in the notice that would have alerted the Claimant she needed do anything further.

True, the notice informed potential claimants that their proofs of administrative expense claims must be accompanied by supporting documentation, whereas here, the Claimant's proof of claim was not. This does not mean, however, that the claim must be disallowed on that basis. The Ninth Circuit Bankruptcy Appellate Panel has held as follows:

> When a creditor files a proof of claim, that claim is deemed allowed under Sections 501 and 502(a). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) – it is not prima facie evidence of the validity and amount of the claim – but that by itself is not a basis to disallow the claim. Section 502(b) sets forth the exclusive grounds for disallowance of claims . . . .

Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) (emphasis added). "Noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance." Id. at 435.

In this case, the absence of detail regarding calculation of the amount of the claim and the absence of accompanying documentation mean only that the proof of claim is not entitled to a presumption of validity as a claim for $17,192. The consequence is not disallowance of the claim. "If the proof of claim is not entitled to prima facie validity then it may have lesser evidentiary weight or none at all, but unless there is a factual dispute that is irrelevant." Heath, 331 B.R. at 436. In this case, the trustee has offered no evidence the claim is not valid or is not in the correct amount.

> [E]vidence of any kind – prima facie or otherwise – is a concern only at a hearing to resolve factual disputes. See Fed. R. Evid. 401 (defining "relevant evidence" as that tending to make more or less probable "the existence of any fact that is of consequence to the determination of the action"). The debtors' claim objections raised no factual dispute requiring a hearing. If [creditor's] proofs of claim are analogized to complaints – as is commonly done – then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of [creditor's] noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not.

Id. at 435-36 (citation omitted).

Admittedly, Heath concerned pre-petition claims, not administrative claims. However, although administrative claims may be allowed only after notice and a hearing (§ 503(b)), the trustee has offered no authority for the proposition that

unless a proof of claim asserting administrative status is accompanied by supporting documentation, it must be denied. Certainly, the claimant has the ultimate burden of proving the validity and amount of his or her administrative claim (Microsoft Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995)); however, that does not mean he or she must satisfy that burden at the initial stage of filing the claim.

Thus, the court will move on to the documentation the Claimant has submitted in response to the objection and to her declaration. The Claimant testifies that the claim is on account of business expenses she paid on the debtor's behalf, totaling $17,192, which expenses were not repaid by the debtor or by the entity that purchased the debtor's business. She states she essentially volunteered to pay these expenses in order to preserve her job with the debtor, and that the expenses were actual and necessary to the preservation of the estate because they allowed the debtor to continue operating. This is some evidence of the validity of the claim.[1]

There are discrepancies, however. First, the Claimant's testimony about business expenses conflicts with the face of the proof of claim, on which she checked the box for § 507(a)(4) priority (wages and commissions), circled the word "commissions," and hand-wrote the words "wages/commission" as the basis for the claim. In addition, she indicated on the face of the claim that it amended a proof of claim filed on September 18, 2009. On that date, the Claimant had filed a proof of claim, Claim No. 24, for exactly the same amount as this claim, $17,192, but on that earlier proof of claim, the Claimant wrote that the basis of the claim was a "commission of 10% for ticket sales." Attached to that proof of claim was an expense report signed by the Claimant on April 18, 2009 for "King[s] season commission on ticket sales" and a computer printout showing amounts of ticket sales for Kings games totaling $171,920, of which 10% is $17,192, the amount of the claim.[2]

The documentation the Claimant filed in response to the trustee's objection is quite different – it consists of invoices from InterState Oil Co., expense reports signed by the Claimant, and copies of receipts from PepBoys, TicketMaster, and LiveNation.com. The Claimant has not submitted an itemization of the amounts of these invoices and receipts, and the court cannot make its own calculation because some of the figures are circled, others are crossed out, and there are other indecipherable handwritten notations. Neither the trustee nor the court should have to attempt to decipher this documentation, when the Claimant is in a better position to do so, but has chosen not to provide an itemization. For this reason, and given the discrepancies between the Claimant's testimony concerning this proof of claim, Claim No. 38 (claim for reimbursement of business expenses), and the proof of claim it purports to amend, Claim No. 24 (claim for a 10% commission on sales of Kings tickets), the court concludes that the Claimant has failed to carry her burden of demonstrating the amount of the claim and that it represents actual and necessary costs of preserving the estate, and the objection will be sustained.

The court will hear the matter.

_____

1 The court takes judicial notice of the debtor's Schedule F filed in this case, which lists the Claimant and Derek Casey as being owed $39,500 for "Advances to corporation on personal credit cards." This is additional evidence of a pattern of conduct between the debtor and the Claimant.

2 For some reason, on July 24, 2013, the Claimant filed a notice by which she withdrew Claim No. 24.

37.	09-26096-D-7 BHS-6	TOP NOTCH LIMOUSINE AND EXECUTIVE SERVICES	OBJECTION TO CLAIM OF LINDA AND DEREK CASEY, CLAIM NUMBER 39 8-26-13 [158]

Tentative ruling:

This is the trustee's objection to the claim of Linda and Derek Casey (the "Claimants"), Claim No. 39 on the court's claims register. The claim is for $47,630.46; the proof of claim asserts both administrative and secured status. The claim does not describe the alleged collateral; under "basis for perfection," one of the Claimants has handwritten "Loan for Daily Operation & vehicles."[1]

The Claimants have not filed opposition. However, that does not necessarily entitle the trustee to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Ordinarily, the court would overrule the trustee's objection for failure to submit any evidence that the claim is not valid, or that the amount asserted is incorrect. See tentative ruling on trustee's objection to Claim No. 38, DC No. BHS-5, Item 36 on this calendar. However, each of the Claimants has filed opposition to other claim objections in this case, which are also on this calendar. The Claimants' counsel should be prepared to advise the court whether the Claimants' failure to oppose this objection was anything other than intentional. If the Claimants in fact have no opposition to the objection, the objection will be sustained.

The court will hear the matter.

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1 There is no documentation attached to the proof of claim. The court notes, however, that the Claimants filed an earlier proof of claim, Claim No. 27, in exactly the same amount as this claim, $47,630.46. The earlier claim contained both an itemization of the amount and 166 pages of documentation. For some reason, on July 24, 2013, the Claimants filed a notice by which they withdrew Claim No. 27.

38.	09-26096-D-7 BHS-7	TOP NOTCH LIMOUSINE AND EXECUTIVE SERVICES	OBJECTION TO CLAIM OF JOHN DEREK CASEY, CLAIM NUMBER 40 8-26-13 [162]

Tentative ruling:

This is the trustee's objection to the claim of John Derek Casey (the "Claimant"), Claim No. 40 on the court's claims register. The claim is for $13,787.12; it asserts it is both an administrative claim and a claim entitled to priority under § 507(a)(4) of the Bankruptcy Code. The Claimant has filed opposition. For the following reasons, the objection will be overruled.

The trustee's objection is five-fold: (1) the claim does not indicate how the amount was arrived at; (2) it is not supported by documentation; (3) it does not indicate why it should be treated as priority or administrative; (4) it appears to be duplicative of another claim; and (5) it asserts the status of an administrative claim, but the Claimant did not file a request for an administrative claim before the administrative claims bar date in this case. The Claimant has filed a declaration in response, in which he testifies the claim was incurred between April 2, 2009, the date of the petition commencing this case, and September 11, 2009, the approximate date the business of the debtor was sold. Thus, the claim was incurred in the post-petition period, and does not qualify as a priority claim under § 507(a)(4).

This leaves the trustee's challenge to the claim as an administrative claim, based on the Claimant's alleged failure to file a request for an administrative claim before the bar date, and the trustee's challenges based on lack of detail about the claim amount and lack of documentation. First, as regards the bar date, the trustee's notice of the chapter 11 administrative claims bar date informed potential claimants that in order to assert a claim for goods or services provided to the debtor between April 2, 2009 and February 6, 2010 (when the case was converted to chapter 7), "you must file a proof of the administrative expense claim, with supporting documentation, on or before 60 days from the date of service of this [notice] [or by January 10, 2012]. Any proof of administrative expense claim filed after that date may result in the Court disallowing the claim in its entirety." Notice of Chapter 11 Administrative Claims Bar Date, filed Nov. 11, 2011, at 1:20-23. The claim that is the subject of this objection was filed June 21, 2010, well before the bar date.

The trustee complains, however, that the Claimant did not file a "request for an Administrative Claim and should be barred from doing so now." Objection to Claim, filed Aug. 26, 2013, at 2:10-11. A claimant who is not an attorney should be able to rely on notices from the trustee as to the acceptable format for the filing of a proof or request for allowance of a claim. In this case, the trustee did not use the term "request for administrative claim" in his notice; instead, he twice used the term "proof of administrative expense claim." The Claimant had already asserted his claim in the form of a proof of claim that specifically claimed to be an "administrative claim" even before the notice went out. There was nothing in the notice that would have alerted the Claimant he needed do anything further.

True, the notice informed potential claimants that their proofs of administrative expense claims must be accompanied by supporting documentation, whereas here, the Claimant's proof of claim was not. This does not mean, however, that the claim must be disallowed on that basis. The Ninth Circuit Bankruptcy Appellate Panel has held as follows:

> When a creditor files a proof of claim, that claim is deemed allowed under Sections 501 and 502(a). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f) – it is not prima facie evidence of the validity and amount of the claim – but that by itself is not a basis to disallow the claim. Section 502(b) sets forth the exclusive grounds for disallowance of claims . . . .

Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) (emphasis added). "Noncompliance with Rule 3001(c) is not one of the statutory grounds for disallowance." Id. at 435.

In this case, the absence of detail regarding calculation of the amount of the claim and the absence of accompanying documentation mean only that the proof of claim is not entitled to a presumption of validity as a claim for $17,192. The consequence is not disallowance of the claim. "If the proof of claim is not entitled to prima facie validity then it may have lesser evidentiary weight or none at all, but unless there is a factual dispute that is irrelevant." Heath, 331 B.R. at 436. In this case, the trustee has offered no evidence the claim is not valid or is not in the correct amount.

> [E]vidence of any kind – prima facie or otherwise – is a concern only at a hearing to resolve factual disputes. See Fed. R. Evid. 401 (defining "relevant evidence" as that tending to make more or less probable "the existence of any fact that is of consequence to the determination of the action"). The debtors' claim objections raised no factual dispute requiring a hearing. If [creditor's] proofs of claim are analogized to complaints – as is commonly done – then the debtors' objections are like motions to dismiss for failure to state a claim on which relief can be granted. The debtors do not deny any of the factual allegations of the proofs of claim; rather, their objections assert that an evidentiary hearing is unnecessary because of [creditor's] noncompliance with Rule 3001(c). Thus, the question is not the evidentiary impact of noncompliance with the rule, but whether noncompliance itself renders a claim subject to disallowance. As already noted, it does not.

Id. at 435-36 (citation omitted).

Admittedly, Heath concerned pre-petition claims, not administrative claims. However, although administrative claims may be allowed only after notice and a hearing (§ 503(b)), the trustee has offered no authority for the proposition that unless a proof of claim asserting administrative status is accompanied by supporting documentation, it must be denied. Certainly, the claimant has the ultimate burden of proving the validity and amount of his or her administrative claim (Microsoft Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995)); however, that does not mean he or she must satisfy that burden at the initial stage of filing the claim.

Thus, the court will move on to the documentation the Claimant has submitted in response to the objection and to his declaration. The Claimant testifies he was a driver and an operations manager for the debtor; that his compensation included both wages and commission; that his commission was 10% of the trips he booked; and that the commissions were not paid during the post-petition period. He testifies that between April 2, 2009 and September 11, 2009, he booked trips that generated $135,993.77 in income for the debtor, and thus, was entitled to commissions of $13,599. He has filed as an exhibit a copy of an earlier proof of claim he filed, Claim No. 26, which was for the same amount as Claim No. 40, $13,787.12, and which had as attachments an expense report signed by the Claimant on September 1, 2009, claiming "Rumsey Rancheria" and "Christian Brothers" commissions earned between April 1, 2009 and September 11, 2009 totaling $13,787.12. (The Claimant has not explained why his declaration refers to $13,599 rather than $13,787.12.) Also filed with Claim No. 26, and included in the Claimant's exhibit filed here, are two of the debtor's "Reservations by Customer Summaries," one for Rumsey Rancheria and one for Christian Brothers High School, showing trips with credit card charges totaling $117,983.77 and $19,887.50, respectively, for a total of $137,871.27, of which 10% is $13,787.12, the amount of the claim.[1]

This evidence is sufficient to demonstrate that the claim was incurred post-petition, that the Claimant is entitled to a commission of 10% of the amount of the trips he booked, and that his services in booking the trips resulted in keeping the debtor operational; that is, in preserving the estate. Thus, the court will overrule the trustee's objection, except that the claim will be allowed in the slightly reduced amount of $13,599.37, per the Claimant's declaration. The claim will be allowed as a chapter 11 administrative expense.

The court will hear the matter.

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1 The trustee's contention that the claim is a duplicate of Claim No. 25 and/or Claim No. 41 is incorrect. Attached to Claim No. 25 are documents clearly showing that the claim is for commissions for trips prior to the petition date. Claim No. 41 has no attachments, but it is in the exactly the same amount as an expense report attached to Claim No. 25, which is clearly for commissions on pre-petition trips.

39.	09-26096-D-7 BHS-8	TOP NOTCH LIMOUSINE AND EXECUTIVE SERVICES	OBJECTION TO CLAIM OF JOHN DEREK CASEY, CLAIM NUMBER 41 8-26-13 [146]

Tentative ruling:

This is the trustee's objection to the claim of John Derek Casey (the "Claimant"), Claim No. 41 on the court's claims register. The claim is for $10,088.73; it asserts it is both an administrative claim and a claim entitled to priority under § 507(a)(4) of the Bankruptcy Code.

The Claimant has not filed opposition. However, that does not necessarily entitle the trustee to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Ordinarily, the court would overrule the trustee's objection for failure to submit any evidence that the claim is not valid, or that the amount asserted is incorrect. See tentative ruling on trustee's objection to Claim No. 38, DC No. BHS-5, Item 36 on this calendar. However, the Claimant has filed opposition to another claim objection in this case, which is also on this calendar. The Claimant's counsel should be prepared to advise the court whether the Claimant's failure to oppose this objection was anything other than intentional. If the Claimant in fact has no opposition to the objection, the objection will be sustained.

In making this determination, the Claimant should note that the trustee objects to this claim on the basis that it appears to be duplicative of Claim No. 25. In fact, Claim No. 25 contains an expense report in the same amount as this claim, $10,088.73, in commissions, along with 27 pages of "Reservations by Customer Summaries" supporting that expense report. (The trips itemized in the summaries

were all during the pre-petition period.) Because the amount of this claim, Claim No. 41, is exactly the same as the amount of that expense report, it strongly appears this claim, Claim No. 41, is a duplicate of part of Claim No. 25, and thus, that the trustee's objection to this claim, Claim No. 41, should be sustained on that basis.

The court will hear the matter.

40.	09-26096-D-7 BHS-9	TOP NOTCH LIMOUSINE AND EXECUTIVE SERVICES	OBJECTION TO CLAIM OF LINDA CASEY, CLAIM NUMBER 37 8-26-13 [150]

Tentative ruling:

This is the trustee's objection to the claim of Linda Casey (the "Claimant"), Claim No. 37 on the court's claims register. The claim is for $14,419.14; the proof of claim asserts administrative, secured, and priority status. The claim describes the alleged collateral as "motor vehicle," and the basis of the claim as "use of vehicle."

The Claimant has not filed opposition. However, that does not necessarily entitle the trustee to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Ordinarily, the court would overrule the trustee's objection for failure to submit any evidence that the claim is not valid, or that the amount asserted is incorrect. See tentative ruling on trustee's objection to Claim No. 38, DC No. BHS-5, Item 36 on this calendar. However, the Claimant has filed opposition to another claim objection in this case, which is also on this calendar. The Claimant's counsel should be prepared to advise the court whether the Claimant's failure to oppose this objection was anything other than intentional. If the Claimant in fact has no opposition to the objection, the objection will be sustained.

The court will hear the matter.

41.	13-23812-D-7 SCR-3	DANIEL/LINDA SAMERA	MOTION TO COMPEL ABANDONMENT 10-1-13 [30]

42.	12-34516-D-7 DNL-2	RICHARD HARVEY AND WENDY LUENENBERG HARVEY	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RICHARD STEPHEN HARVEY AND WENDY LUENENBERG HARVEY, PFC INSURANCE CENTER, INC., ANGELIQUEA PASSAGLIA AND RANDAL FLETCHER 8-20-13 [52]

Tentative ruling:

This is the motion of chapter 7 trustee Kimberly Husted (the "trustee") for approval of a compromise among the trustee, the debtors, and a group of parties the trustee refers to as the PFC Parties. The River Valley Parties ("River Valley") have filed opposition, to which the trustee, the debtors, and the PFC Parties have filed replies. For the following reasons, the motion will be denied or the hearing will be continued.

The apparently undisputed facts are these. At the time this case was filed, debtor Richard Harvey ("Harvey") was, and for seven years had been, employed by River Valley, an insurance agency, under an Agency - Producer Agreement (the "Agreement"), pursuant to which Harvey was to be credited with a vested interest in 50% of the "Estate Value" of the insurance business he produced for River Valley, computed as set forth in the Agreement. It was agreed that upon termination of the Agreement, Harvey would have the first right to purchase from River Valley the unvested portion of the "Estate Value" of the business he had produced; if he did not exercise that right, then River Valley would purchase from Harvey his vested interest in the same accounts.

On August 3, 2012, Harvey and two other individuals incorporated a new insurance agency, PFC Insurance Center, Inc. ("PFC Insurance" or "PFC").[1] Five days later, on August 8, 2012, Harvey and his wife filed their petition commencing this case. Harvey did not list his interest in PFC Insurance on either his Schedule B or his statement of financial affairs; in fact, neither "PFC" nor "PFC Insurance" appears anywhere in his bankruptcy paperwork. Harvey listed Stirnaman Insurance Agency (a business name of River Valley) as his employer on his Schedule I; he did not state the nature of his occupation. He did not list the Agreement on his Schedule G, where he was

required to list "all executory contracts of any nature." He did not disclose anywhere on his Schedule B (or anywhere else in his bankruptcy paperwork) his vested interest in 50% in the Estate Value of the business he had produced for River Valley (as the parties refer to it, his "book of business"), or his first right to purchase the unvested portion from River Valley. These facts are a strong indication that Harvey breached 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).

Exactly one week after he and his wife filed this case, Harvey gave notice to River Valley that he was terminating his employment. Three weeks after that, without informing the chapter 7 trustee, Harvey sent a letter to River Valley advising that he was exercising his option to purchase the unvested portion of the book of business for $71,800. He apparently made a partial payment, of $14,000, at the same time; no further payments have been made. A dispute then arose between the River Valley Parties and the PFC Parties. The PFC Parties contend River Valley has (1) failed to account for and transfer commissions arising from the book of business; (2) refused to notify carriers that the broker of record for the book of business had changed to PFC; and (3) competed for clients purportedly transferred to PFC. River Valley contends its performance is excused by the absence of bankruptcy court approval of the purchase and by Harvey's failure to make any further payments toward the $71,800 purchase price.

The trustee has entered into a settlement with the debtors and the PFC Parties, pursuant to which the debtors will pay the trustee $27,000 in exchange for which the trustee will assign to the PFC Parties all of the estate's claims, causes of action, and rights against River Valley, whether arising pre- or post-petition, and including claims arising under various sections of the Bankruptcy Code, including sections creating the trustee's avoidance powers.[2] The trustee will release Harvey and the other PFC Parties from all claims arising from the Agreement, the formation of PFC Insurance, and Harvey's purported purchase of the book of business from River Valley. The River Valley Parties oppose the compromise on the ground that there has been no accounting from the PFC Parties of the monies they have collected on the book of business since they acquired it from River Valley, "so we are in the dark as far as how much PFC and Harvey profited by their post-petition gutting of the estate." River Valley's Opposition, filed Sept. 13, 2013, at 2:5-6. River Valley estimates the amount is between $50,000 and $80,000, with the PFC Parties continuing to collect on the existing accounts.

The trustee's response is two-fold. First, he contends River Valley has not filed a claim in this case "nor is there any reasonable prospect that such a claim would be allowed." Trustee's Reply, filed Sept. 25, 2013, at 1:26-27. Thus, in the trustee's view, River Valley does not have standing to object to the compromise. Harvey did not list River Valley in his bankruptcy schedules (or otherwise, apparently, notify it of his bankruptcy filing); thus, he apparently believed River Valley was not owed money as of the

petition date. Nevertheless, as of the petition date, River Valley was a party to an executory contract with Harvey.[3] Because the trustee has neither accepted nor rejected the Agreement within the 60-day period post-petition, the Agreement has been deemed rejected (§ 365(d)(1)), and River Valley would have the right to file a claim arising from the rejection (§ 502(g)(1)) "within such time as the court may direct." Fed. R. Bankr. P. 3002(c)(4). In these circumstances, and given the Code's very broad definitions of "claim" and "creditor" (see § 101(5) and (15)), the court has no trouble concluding that River Valley is a creditor in this case, and the court will proceed to consider the compromise.

"The trustee, as the party proposing the compromise, has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved." In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The factors the court is to consider are set forth in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); they are well known to bankruptcy professionals. The trustee is not aware there would be any unusual difficulties in collecting on a judgment. She believes the underlying dispute is complex, in that the parties' duties and performance under the Agreement are heavily disputed, and that litigation would involve as witnesses the clients who have switched from River Valley to PFC. Although she believes she would likely prevail "in voiding the Debtor's ultra vires exercise of the estate's right under the [Agreement],"[4] she concludes that "[t]he anticipated litigation costs are high in comparison to the expected award." Id. at 4:11. However, she provides no hint of the amount of that expected award; that is, there is no indication of the value of the trustee's claims against the PFC Parties that are being released by the compromise. In these circumstances, the court does not have enough information to determine whether the compromise is fair and equitable.

In her reply to River Valley's opposition, the trustee states that before entering into the compromise, she obtained information from both PFC and River Valley about the book of business and the post-petition commissions each has received. She complains that River Valley appeared to be satisfied with the information when it allegedly entered into the global settlement described above; however, the trustee has not provided the information to the court. The court notes in this regard that Harvey apparently thought the book of business he was purchasing from River Valley was worth at least $71,800 – that is what he proposed to pay for it. Thus, it appears to the court Harvey may be profiting significantly from his failure to disclose the asset on his schedules, an outcome the court must consider. See Woodson, 839 F.2d at 620 ("[T]he bankruptcy court had a special responsibility to guard against a compromise that so clearly served [the debtor's] own interests at the expense of his creditors.").

In response to River Valley's opposition, PFC complains that River Valley "refused to perform the buyout from the outset" (PFC's Response, filed Sept. 25, 2013, at 3:17), and thus "forced [Harvey and PFC] to re-write clients who are willing to move from River Valley to PFC, one at a time." Id. at 3:23-24. In addition, according to PFC, River Valley began soliciting

clients in the book of business it had purportedly transferred to Harvey and PFC; "thus, Harvey and PFC had to compete for the business, again, just as if there were no agreement to buy the Book" (id. at 4:9-10), and retained commissions earned on the book of business, not just from clients retained by River Valley but also from clients transferred to PFC.

Finally, citing Towers v. Wu (In re Wu), 173 B.R. 411, 414-15 (9th Cir. BAP 1994), PFC claims Harvey is entitled in any event to retain any commissions attributable to his post-petition efforts. In Wu, the Bankruptcy Appellate Panel held that to determine whether insurance renewal commissions are property of the estate, the court must determine what portion is attributable to pre-petition property or services, as opposed to post-petition services of the debtor. According to PFC, "Harvey and PFC . . . would argue (and show) that no portion of the postpetition commissions were attributable to prepetition work, because River Valley refused to turnover [sic] any clients or commissions, or to notify carriers that the broker of record had changed for clients in the Book. Instead, Harvey and PFC only received commissions based on their postpetition efforts to re-write those clients." PFC's Response, at 6:17-21. Thus, they conclude the trustee's ability to prevail in litigation against Harvey and PFC is speculative.

In the court's view, PFC passes far too lightly over the fact that the book of business itself was – and remains – an asset of the bankruptcy estate, which Harvey concealed from the trustee and his creditors, and which he co-opted for his and PFC's benefit without court authority and without compensating the estate. In order to prevail against the trustee with regard to the commissions they received post-petition, Harvey and PFC would need to persuade the court the book of business itself contributed nothing to their ability to collect those commissions. As regards the post-petition effort they were required to invest, Harvey would go into the proceedings with at least one strike against him in terms of credibility, given the blatant improper omissions from his schedules. In short, given the timing of the various events – the incorporation of PFC five days before the bankruptcy filing, Harvey's termination of his employment one week later, and his purported exercise of the purchase option three weeks later – all without informing the trustee, it is difficult not to see these events as an orchestrated attempt to conceal estate assets and gain the advantages of bankruptcy without exposing to loss his most valuable asset – his rights under the Agreement.

Finally, because the compromise includes the trustee releasing Harvey and PFC from all claims against them arising out of the Agreement and the purported purchase by Harvey and PFC of River Valley's 50% interest in the book of business, the compromise is in reality a sale of those claims to Harvey and PFC for $27,000. The trustee has not demonstrated that she has maximized the value of these assets of the estate (see In re Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 421 (9th Cir. BAP 2003)), and to do so, will need to notice the matter for hearing as a proposed sale with the possibility for overbidding by River Valley or anyone else.

For the reasons stated, the motion will be denied. Alternatively, the court will continue the hearing to allow the trustee to supplement the record as to the value of the claims she is giving up in the compromise, so the court can determine whether the compromise amount is within the range of reasonableness, and to allow the trustee to notice the matter as a sale under § 363(b) and to solicit overbidding. The court will hear the matter.

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1 According to its website, Harvey is the president of PFC Insurance, and it was Harvey who "launched" it. See website of PFC Insurance Center, http://pfcinsurance.com/our-team/ (last visited Oct. 12, 2013).

2 In reply to River Valley's opposition to the motion, the trustee's counsel has testified about an earlier apparent settlement along the same lines, but to which River Valley had also, apparently, agreed. He claims that after the agreement was drafted, River Valley demanded an inconsistent provision; the trustee was unable to resolve that dispute, and thus, he settled with the PFC Parties. The trustee has not explained why this testimony is admissible in light of Fed. R. Evid. 408(a), except that she apparently finds it relevant to the Woodson factors of inconvenience and delay, discussed below. In the trustee's view, "[i]t is unfair and prejudicial to the estate for the River Valley Parties, whose reneging on the global settlement caused the Trustee to incur undue expense and suffer unnecessary delay, to now oppose a compromise that merely assigns pre-existing rights to the PFC Parties." Declaration of J. Russell Cunningham, filed Sept. 25, 2013, at 2:16-19.

3 As such, River Valley should have been listed on Harvey's master address list in this case (see Fed. R. Bankr. P. 1007(a)(1), requiring that all entities on Schedules D, E, F, G, and H be listed on the master address list), and should have been given notice of the bankruptcy filing. Had Harvey complied with this duty, even if not with his other duty of disclosure noted above, this difficult situation might not have arisen.

4 Trustee's Motion, filed Aug. 20, 2013, at 3:23-25.

43.	13-28732-D-7 RWH-2	RONALD CORILONI	MOTION TO AVOID LIEN OF BOUNTY RECOVERY 9-26-13 [24]

44.	12-39434-D-7 BLC-4	ANTHONY/PAMELA BOSSERMAN	MOTION TO AVOID LIEN OF CAPITAL ONE SMALL BUSINESS 10-2-13 [105]
45.	12-39434-D-7 BLC-5	ANTHONY/PAMELA BOSSERMAN	MOTION TO AVOID LIEN OF KARIANNE MORGAN AND MATTHEW MORGAN 10-2-13 [99]
46.	12-39434-D-7 BLC-6	ANTHONY/PAMELA BOSSERMAN	MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A. 10-2-13 [93]
47.	13-23439-D-7 SJJ-1	JUST/VICKIE WILLIS	CONTINUED 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. As the motion was noticed pursuant to LBR 9014-1(f)(2), the hearing was continued to permit the trustee to file opposition and the debtors to file a reply. The trustee has now filed opposition; as of this date, the debtors have not filed a reply. For the following reasons, the motion will be denied.

The court issued a tentative ruling for the initial hearing on this matter, which appears in the court's minutes for September 18, 2013. The court adopts its findings and conclusions, as set forth in that ruling, as though fully set forth herein, and adds that the debtors have offered no response to any of the concerns raised in that ruling. The court has now reviewed the trustee's testimony, and finds that it supports the conclusion that the debtors and their attorney have failed to cooperate with the trustee's efforts to market the property that is the residence of the debtor and possibly of the joint debtor – property that is unequivocally property of the estate, subject to an exemption the debtors have only recently claimed. In particular, the debtor made arrangements to meet the trustee at the property so the trustee could view it, but then failed to appear. The debtors' attorney, Stephen Johnson, insisted he be notified of and present at all showings of the property. He informed the trustee's broker – directly, and without informing the trustee – that the case was going to be converted to chapter 13 and the property was no longer for sale, and actually appeared at one showing and presented potential buyers with a copy of the chapter 13 paperwork, so he would be "in full disclosure." And apparently, the debtors and Mr. Johnson did not show up for a showing at a later date, and the showing had to be rescheduled. It appears others in Mr. Johnson's office have attempted to work with the trustee and his broker; however, the trustee's evidence is further support for the conclusion that the debtors have not acted in good faith in seeking conversion and forfeited their right to have the case converted to chapter 13.

For the reasons stated, the debtors have forfeited their right to have the case converted to chapter 13, and the motion will be denied. The court reaches this conclusion without relying on the trustee's conclusions concerning the debtors' tax returns. The trustee points out that the debtors filed separate returns for 2012, each as head of household, which the trustee contends conflicts with their claim that they are no longer separated and are living together. The problem with the argument is that the head of household claims appear to apply to the last day of the tax year covered by the returns, 2012, and not to the present time. The court notes, however, that the debtors' statement of financial affairs shows debtor Just Willis' gross income in 2012 as $29,959, whereas Schedule C to his tax return for 2012 shows gross business receipts of $221,331 and gross income (after cost of goods sold) of $66,171. The discrepancy between these figures and the figure on the debtors' Statement of Financial Affairs further supports the conclusion that the debtors have not acted in good faith and should not be permitted to have the case converted to chapter 13. As a result, the court intends to deny the motion by minute order.

The court will hear the matter.

48. 13-30158-D-7 CAROL COLLINS
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-27-13 [13]

Final ruling:

The motion is denied for the following reasons: (1) the moving party failed to include an appropriate docket control number (See LBR 9014-1(c)); (2) the notice failed to include the information required by LBR 9014-1(d)(2); and (3) the notice of hearing does not indicate the court's full and accurate address. For these reasons the court will deny the motion by minute order. No appearance is necessary.

49. 12-37060-D-7 ROYA NESVA
SCR-3

MOTION TO COMPEL ABANDONMENT
10-1-13 [46]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon the real property at 2460 Luciana Way, Roseville, California. 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 proof of service states that service was made on September 17, 2013 (the date an earlier motion for this same relief was filed and served), whereas the moving papers were not filed until October 1, 2013. (The notice, motion, and declaration all bear signatures dates of October 2, 2013, which must be inaccurate, since they were filed the day before.) Thus, it appears the service date on the proof of service is inaccurate.

Assuming the trustee appears at the hearing, as the court expects,[1] the court will hear the matter. If he does not, the motion will be denied for failure to demonstrate when service was made, and thus, that service was properly made.

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1 The trustee filed written opposition to an earlier motion – a motion that was denied because of service and notice defects.

50. 09-29162-D-11 SK FOODS, L.P.
SH-227

CONTINUED MOTION TO EMPLOY BOWLES AND VERNA, LLP AS SPECIAL COUNSEL
8-29-13 [4436]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ Bowles and Verna, LLP as special counsel is supported by the record. After consideration of the supplemental declaration of Richard T. Bowles, the court will grant the motion to employ Bowles and Verna, LLP as special counsel. Moving party is to submit an appropriate order. No appearance is necessary.

51. 13-28369-D-7 EDWIN GERBER
PA-1

MOTION TO EMPLOY ESTELA O. PINO AS ATTORNEY
9-20-13 [21]

52. 13-29280-D-7 JOYCE SIMMONS

CONTINUED APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
9-5-13 [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 application for waiver of the Chapter 7 filing fee is supported by the record. As such the court will grant the application for waiver of the Chapter 7 filing fee by minute order. No appearance is necessary.

53. 13-30483-D-7 GARY/SHARON SPARKS
SLF-2

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS AND/OR MOTION FOR TURNOVER OF PROPERTY
9-25-13 [30]

54. 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]