

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 4, 2014 at 9:32 A.M.

1. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR LIMITED
[13-2288](#) JWK-2 MOTION TO STAY DISCOVERY
PRIOR V. TRI COUNTIES BANK ET 11-20-13 [[48](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. By order signed October 31, 2014, the court dismissed the adversary proceeding.

The court will issue a minute order.

2. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR PROTECTIVE
[13-2288](#) NJR-1 ORDER
PRIOR V. TRI COUNTIES BANK ET 12-17-13 [[76](#)]
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. By order signed October 31, 2014, the court dismissed the adversary proceeding.

The court will issue a minute order.

3. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION TO AMEND
[13-2288](#) WFH-1 2-25-14 [[184](#)]
PRIOR V. TRI COUNTIES BANK ET
AL

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. By order signed October 31, 2014, the court dismissed the adversary proceeding.

The court will issue a minute order.

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| 4. | <u>13-35149</u> -B-7 COLBY ELRICK <u>14-2072</u> WBH-1 HODGES V. ELRICK | MOTION TO DEEM ADMITTED ALL MATTERS IN PLAINTIFF'S REQUESTS FOR ADMISSIONS AND/OR MOTION FOR SANCTIONS 10-14-14 [<u>16</u>] |
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Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling.

The motion is dismissed.

The motion suffers from various procedural defects. First, the motion is untimely. This motion concerns the defendant debtor's alleged failure to respond to discovery propounded on the debtor on August 14, 2014. The court issued a Scheduling Order in this adversary proceeding on May 7, 2014 (Dkt. 14), which established a close of non-expert discovery of October 31, 2014. The Scheduling Order also states in relevant part:

ORDERED, that close of discovery means that all discovery in this adversary proceeding of the designated kinds shall be completed by the date set forth above. The word "completed" means that all discovery shall have been conducted such that any disputes relative to discovery shall have been resolved by appropriate order.

(Dkt. 14 at 3).

This motion will be heard on November 4, 2014, after the close of non-expert discovery. It is not timely.

In addition, the plaintiff did not give sufficient notice of the motion. The plaintiff set the motion for hearing under the procedures established by the Scheduling Order allowing motions for protective orders and orders compelling discovery to be set for hearing not less than 14 calendars days from the date of service. However, this motion does not seek either a protective order or an order compelling discovery. It cannot be set for hearing on less than 28 days' notice from the date of service (31 days if service is made by mail).

Finally, the motion is incomplete. The exhibit index to the exhibits filed with the motion indicate that copies of the discovery served on the debtor on August 14, 2014 are filed with the motion. However, the documents attached to the exhibit index consist of documents filed in an action between the parties in Sacramento County Superior Court. The court did not locate copies of the discovery anywhere on the docket.

The court will issue a minute order.

5. [14-22809](#)-B-7 PETER/JUANITA ROONEY MOTION TO COMPEL ABANDONMENT
CAH-1 10-3-14 [[48](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtors' interest in the real property located at 7687 Conquistador Court, Granite Bay, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the value of the Property is \$477,000.00. The debtors also allege without dispute that the Property is encumbered by a first priority deed of trust in favor of Deutsche Bank National Trust Company with a balance of approximately \$429,000.00. The debtors have claimed an exemption in the Property on Schedule C of \$48,000.00 pursuant to Cal. Civ. Proc. Code § 704.730, and allege without dispute that they are entitled to claim an exemption of up to \$100,000.00. The chapter 7 trustee has filed a statement of non-opposition to the motion. The court finds that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

6. [14-24824](#)-B-7 JOHN/JEANNETTE NOTMAN MOTION TO SELL
ADJ-3 10-2-14 [[93](#)]

Tentative Ruling: The motion is granted in part and denied in part to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the real property located at 3133 West March Lane, Suite 2000, Stockton, California (APN 116-410-04) (the "Property") to Tudor Properties, LLC for \$310,000.00 on the terms set forth in the Commercial Property Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion. The trustee is authorized to execute all documents necessary to effect the sale. Pursuant to 11 U.S.C. § 330(a), the trustee is authorized to pay a commission of \$9,300.00 to the trustee's real estate broker, PMZ Real Estate ("PMZ"). The trustee is also authorized to pay Tudor's broker, JCL Realty, \$9,300.00 from the proceeds of the sale. The net proceeds of the sale shall be administered for the benefit of the estate. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms to be established by the court at the

The court approved the employment of PMZ as broker for the chapter 7 trustee by order entered July 28, 2014 (Dkt. 39). The court finds that the approved commission is reasonable compensation for actual and

The debtors have made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

7. [08-22725](#)-B-7 BAYER PROTECTIVE SERVICES, INC. MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S)
HSM-15 10-7-14 [[969](#)]

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the applicant's request for interim compensation in the amount of \$28,524.00 in fees and \$4123.00 in costs for a total of \$32,377.00 for services rendered during the period October 1, 2010, through March 11, 2014. The court also approves on a final basis all fees and costs totaling \$99,297.15 for services rendered during the period April 13, 2009, to March 11, 2014. The approved fees and costs shall be paid, to the extent not already paid, as a chapter 11 administrative expense. Except as so ordered, the motion is denied.

The court will issue a minute order.

8. [08-22725](#)-B-7 BAYER PROTECTIVE SERVICES, INC. MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, SPECIAL COUNSEL(S)
HSM-16 10-7-14 [[974](#)]

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The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$36,484.50 in fees and \$822.50 in costs, for a total of \$37,307.00, for services rendered during the period March 11, 2014, through and including November 4, 2014. The approved fees and costs shall be paid as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered May 12, 2014, the court approved the trustee's employment of the applicant as counsel for the chapter 7 trustee, with an effective date of employment of March 11, 2014. The applicant now seeks approval of \$36,484.50 in fees and \$822.50 in costs, for a total of \$37,307.00, for services rendered during the period March 11, 2014, through and including November 4, 2014. The court finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a).

The court will issue a minute order.

9. [13-24125](#)-B-7 DAVID/BONNIE FRANZONI
DNL-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
10-6-14 [[121](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$22,455.93 in fees and \$394.07 in costs, for a total of \$22,850 for services rendered between December 2, 2013, and September 29, 2014. The approved fees and costs shall be paid as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered December 20, 2013, the court approved the trustee's employment of the applicant as counsel for the chapter 7 trustee, with an effective date of employment of December 2, 2013. The applicant now seeks approval of \$22,455.93 in fees and \$394.07 in costs, for a total of \$22,850 for services rendered between December 2, 2013, and September 29, 2014. The court finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a).

The court will issue a minute order.

10. [12-41636](#)-B-7 DIANA GORDEN
CWC-3

MOTION FOR COMPENSATION FOR
CARL W. COLLINS, TRUSTEE'S
ATTORNEY(S)
10-6-14 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$5,084.00 in fees and \$72.50 in costs, for a total of \$5,202.00 in fees and costs for services rendered between July 25, 2013, through September 25, 2014. The approved fees and costs shall be paid as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered August 7, 2013, the court approved the trustee's employment of the applicant as counsel for the chapter 7 trustee, with an effective date of employment of July 1, 2013. The applicant now seeks approval of \$5,202.00 in fees and costs for services rendered between July 25, 2013, through September 25, 2014. The court finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a).

The court will issue a minute order.

11. [14-23090](#)-B-13 RUBY DULAY
[14-2188](#) KDC-1
GUPTA ET AL V. DULAY

MOTION TO COMPEL
9-26-14 [[14](#)]

Tentative Ruling: Defendant Ruby Harpreet Dulay (the "Defendant")'s opposition is overruled. Plaintiffs Deepak Gupta and Vijay Gupta (the "Plaintiffs")'s motion to compel is granted in part and dismissed as moot in part. The Plaintiffs' request pursuant to Federal Rules of Civil Procedure ("FRCP") 26(a)(1) and 37(a)(2)(A) to compel initial disclosures in this adversary proceeding is dismissed as moot as it appears from both the Defendant's opposition and the Plaintiffs' reply that the Defendant's initial disclosures were submitted to Plaintiffs' counsel on October 23, 2014. The provisions of FRCP 37(c)(1) remain applicable to any failures to disclose that should have been made, but were not, in the submitted disclosures. Pursuant to FRCP 37(a)(5)(A), the Plaintiffs are awarded reasonable attorney's fees of \$1,100.00 incurred in bringing this motion. Said fees will be included in any judgment rendered in this adversary proceeding. Except as so ordered, the motion is denied.

On August 27, 2014, the court issued a scheduling order in this case (Dkt. 11) (the "Scheduling Order"). The Scheduling Order was based on the parties' joint discovery plan filed August 19, 2014 (Dkt. 9). Pursuant to the Scheduling Order, the last date to make initial disclosures in this case was August 26, 2014. The Plaintiffs allege and provide evidence, which is not disputed by the Defendant, that the

Defendant failed to timely provide the Plaintiffs with the initial disclosures as contemplated by the Scheduling Order. The court notes that the Defendant also never moved for an order to modify the Scheduling Order in this adversary proceeding. Accordingly, the Plaintiffs felt the need to file the instant motion.

FRCP 26(a)(1), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7026, imposes on the parties a duty to provide each other with certain initial disclosures. FRCP 37(a)(3) provides that if a party fails to make a disclosure as required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. As noted above, the portion of the motion compelling the initial disclosures is dismissed as moot as it appears that the Defendant provided the Plaintiffs with the initial disclosures on October 23, 2014. However, the entire motion is not moot as there remains the issue of appropriate sanctions to be imposed as a result of the Defendant providing the initial disclosures fifty-eight (58) days later than the date set forth in the Scheduling Order.

On the issue of appropriate sanctions, the Scheduling Order states as follows:

ORDERED, every motion for an order compelling disclosure or discovery and every opposition to such motion shall be supported by one or more declarations of the party's fees and expenses incurred in preparation of the motion or opposition thereto so the court may make an award contemporaneously with its ruling on the motion, as contemplated by, e.g., FRCP 37(a)(5).

See Scheduling Order at p.5.

Federal Rule of Civil Procedure 37(a)(5)(A) addresses the payment of expenses if a motion to compel is granted or, as here, the disclosure or discovery is provided after filing. In relevant part, this rule states that if the disclosure or requested discovery is provided after the motion was filed, the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(A)(i)-(iii). Here, the Plaintiffs have provided evidence that they attempted in good faith to obtain the information prior to filing this motion. Furthermore, nothing in the Defendant's brief opposition suggests to the court that his failure to timely comply with the Scheduling Order was substantially justified or that other circumstances exist that would make an award of expenses unjust.

In this instance, the court awards the Plaintiffs \$1,100.00 in reasonable attorney's fees incurred in bringing this motion. As set forth above, the Scheduling Order requires that a motion to compel be supported by one or more declarations setting forth the fees and expenses incurred in preparation of the motion. According to the attached declaration of Plaintiffs' counsel, he spent 3.5 hours preparing this motion and its supporting documents, and his hourly rate for this litigation is \$275.00.

The Plaintiffs request \$1,100.00 in reasonable fees, but the declaration, which is the only evidence of fees that the court has been provided, suggests that \$962.50 in fees were incurred (3.5 hours x \$275.00/hour). The court awards the Plaintiffs the requested \$1,100.00 because the court takes judicial notice that an appearance on this motion will be required and the difference between the requested amount and the declaration amount is \$137.50 (one half hour at the \$275.00 hourly rate). The court finds that \$1,100.00 constitutes reasonable attorney's fees incurred by the Plaintiffs through the hearing. The awarded fees will be included in any judgment rendered in this adversary proceeding.

The court will issue a minute order.

12. [13-33736](#)-B-7 MANUEL/MARIA FERNANDES MOTION TO COMPEL
HCS-2 10-7-14 [[22](#)]

Tentative Ruling: The motion is denied without prejudice.

The chapter 7 trustee seeks an order compelling the debtors to (1) grant the trustee and her realtor access to real property located at 2505 South Macarthur Drive, Tracy, California 95376 (the "Property"); (2) turnover mortgage statements for the Property for the six months immediately preceding the bankruptcy filing; (3) turnover copies of all rental agreements for the rental units located on the Property (the "Rental Units"); (4) provide an accounting of all rents received for each of the Rental Units in the two years immediately preceding the bankruptcy filing and since the bankruptcy filing; and (5) turnover all rents received on each of the Rental Units since the bankruptcy filing.

Regarding to the trustee's turnover requests, in order to prevail on a turnover motion the trustee must demonstrate that: (1) the Property is or was in the debtors' possession, custody or control during the pendency of the bankruptcy case; (2) the Property could be used by the trustee or exempted by the debtors; and (3) the Property has more than inconsequential value and benefit to the estate. Bailey v. Suhar (In re Bailey), 380 B.R. 486, 490 (6th Cir. BAP 2008). If the foregoing elements are demonstrated, but the debtors are not in possession of the Property at the time of the motion, the trustee is entitled to an order requiring the debtors to pay to the trustee the value of the Property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 200 (9th Cir BAP 2013). See, also In re Bailey, 380 B.R. at 492-493; Boyer v. Davis (In re U.S.A. Diversified Prods., Inc.), 193 B.R. 868, 879 (Bankr. N.D. Ind. 1995); In re Gentry, 275 B.R. 747 (Bankr. W.D. Va. 2001). Such an order to pay the value of the Property is enforceable as a money judgment. White v. Brown (In re White), 389 B.R. 693, 699 (9th Cir. BAP 2008).

The court does not grant the trustee's requests for turnover of mortgage statements, rental agreements for the Rental Units, or rents received on each of the Rental Units. As to the mortgage statements and rental agreements, the trustee has provided no evidence that the debtors are in possession of these documents. As to the rents received, not only has the trustee failed to establish that the debtors are currently in possession of any rents received from the Rental Units, but she has also failed to provide any evidence regarding the value of the rents allegedly received.

As to the trustee's compulsion requests, including the trustee's request that the court order the debtors provide an accounting of all rents received from the Rental Units, the court does not grant these requests because the trustee cites no authority supporting the proposition that the court may on a motion to compel issue a mandatory injunction requiring the debtors to perform their duties under 11 U.S.C. § 521(a). F.R.Bankr.P. 7001(7). To the extent the trustee seeks a turnover of, e.g., the accounting, the trustee has failed to present any evidence that the debtors have the accounting in their possession or of its value.

The court will issue a minute order.

13. [14-30248](#)-B-11 SUSAN GLINES-THOMPSON MOTION TO EXTEND AUTOMATIC STAY
MLA-1 AND/OR MOTION TO IMPOSE
AUTOMATIC STAY
10-16-14 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

14. [13-23353](#)-B-7 ALLEN-SIMMONS HEATING & MOTION TO COMPROMISE
PA-7 SHEET METAL CO. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CORDELIA POINT,
LLC
10-7-14 [[65](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe for adjudication, and therefore the court lacks jurisdiction over the matter. By this motion, the trustee seeks court approval of a settlement agreement between himself, Cordelia Point, LLC ("Cordelia") and John "Jack" M. Bethards ("Mr. Bethards") to resolve the pre-petition and post-petition claims of Cordelia and Mr. Bethards. However, the trustee has failed to establish that there is actual, finalized agreement for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no actual, finalized agreement to which all interested parties agree, no case or controversy within the meaning of Article III exists.

The court acknowledges the settlement agreement attached as Exhibit "1" to the motion (Dkt. 68, pp.3-10) (the "Agreement"). However, as the trustee acknowledges in the motion, the Agreement has not been signed by the trustee or Mr. Bethards (either in his individual capacity or on behalf of Cordelia). The trustee has provided no other evidence that Mr.

Bethards or Cordelia consent to the terms of the Agreement. The parties' consent may be manifested in ways other than executing the Agreement. For example, they may file a response to the motion stating their agreement, or they may appear at the hearing on the motion and state their agreement on the record. Absent such actions, however, the motion is not ripe for adjudication. The court will not, as the trustee suggests, approve the compromise and grant him authorization to execute the Agreement absent proof of consent by Mr. Bethards and Cordelia to the terms of the Agreement. Furthermore, it is questionable whether there will be a finalized agreement even if the court does grant this motion as the trustee acknowledges in the motion that he "anticipates" the Agreement being executed if the court approves the compromise. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

15. [13-22068](#)-B-7 JOHN/AMY SPITHORST MOTION TO COMPROMISE
DNL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JPMORGAN CHASE
BANK, N.A.
10-14-14 [[61](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

16. [11-42576](#)-B-11 ATMAN HOSPITALITY GROUP, MOTION TO COMPROMISE
MLG-35 INC. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NUOVO LAND
DEVELOPMENT, LLC AND ATOJA
ENTERPRISES, LLC
10-7-14 [[611](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. By this motion, the chapter 11 post-confirmation plan administrator seeks court approval, pursuant to Federal Rule of Bankruptcy Procedure 9019, of a settlement agreement with Nuovo Land Development, LLC and Atoja Enterprises, LLC (collectively, the "Nuovo Parties"). Pursuant to Federal Rule of Bankruptcy 9019, notice of a motion for approval of a compromise or settlement shall be given to creditors, the United States Trustee, the debtor, and indenture trustees as provided in Federal Rule of Bankruptcy Procedure 2002 and to any other entity as the court may direct. Fed. R. Bankr. P. 9019(a). Pursuant to Federal Rule of Bankruptcy Procedure 2002, the debtor, trustee, all creditors, and indenture trustees shall be given at least 21 days' notice by mail of the hearing on approval of a compromise or settlement of a controversy. Fed. R. Bankr. P. 2002(a)(3). Here, the proof of service (Dkt. 615) indicates that only the United States Trustee and counsel for the Nuovo Parties were served with the motion, notice of hearing, and supporting documents. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

17. [14-26585](#)-B-7 CARLOS SANTANA MOTION TO RECONSIDER
CAH-1 10-3-14 [[32](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. On reconsideration, the order entered September 25, 2014 (Dkt. 26) (the "Order"), which overruled the debtor's opposition, sustained the trustee's objections to the debtor's claims of exemption, and disallowed all claims of exemption in property of the debtor pursuant to Cal. Code Civ. P. § 703.140(b), is vacated. Except as so ordered, the motion is denied.

The motion is granted because the trustee has not opposed. "Newly discovered evidence" does not include evidence of post-judgment events or facts. Corex Corporation v. United States, 638 F.2d 119, 121 (9th Cir. 1981), implied overruling on other grounds recognized by Gregorian v. Izvestia, 871 F.2d 1515, 1526 (9th Cir. 1989) ("Cases construing 'newly discovered evidence,' either under 60(b)(2) or Rule 59, uniformly hold that evidence of events occurring after the trial is not newly discovered evidence within the meaning of the rules.").

The court will issue a minute order.

18. [13-34754](#)-B-11 CIELO VINEYARDS & CONTINUED MOTION TO CONVERT TO
WSS-3 WINERY, LLC CHAPTER 7
8-27-14 [[192](#)]

Tentative Ruling: None.

19. [14-29866](#)-B-7 MATTHEW WALLACE MOTION FOR ABANDONMENT OF
DO-1 PROPERTY O.S.T.
10-17-14 [[15](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3) (motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

20. [13-26304](#)-B-7 JOHN MUSHOLT
[13-2246](#)
KANAWYER V. MUSHOLT

MOTION TO COMPEL
10-1-14 [[66](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is procedurally defective. To start, the plaintiff has failed to provide the defendant with sufficient notice. Pursuant to Local Bankruptcy Rule 9014-1(d), a notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3). In this instance, the notice of hearing (Dkt. 67), which appears to utilize a state court form, fails to comply with the foregoing. Accordingly, the court finds that the plaintiff failed to provide the defendant with sufficient notice of the hearing on this matter, and the motion is dismissed without prejudice.

Additionally, the plaintiff provides no evidence in support of the motion aside from the unsworn statements in the motion itself. LBR 9014-1(d)(6). Even if the court were to construe the plaintiff's motion for sanctions filed October 1, 2014 (Dkt. 68), and the affidavit contained therein, as evidence supporting the instant motion, the affidavit contains factual inconsistencies with what is asserted in the motion.

Finally, the court notes that the plaintiff appears to be requesting that the defendant respond to certain interrogatories that were filed in this case on May 28, 2014 (Dkt. 51) and July 15, 2014 (Dkt. 59). Both sets of interrogatories appear to be form interrogatories used in family law matters in state court. The plaintiff has provided no persuasive reason why the court should compel the defendant to fill out state court family law forms in this federal court matter relating to an objection to the granting of the debtor's discharge and/or the dischargeability of particular debts.

The court will issue a minute order.

21. [13-26304](#)-B-7 JOHN MUSHOLT
[13-2246](#)
KANAWYER V. MUSHOLT

MOTION FOR SANCTIONS
10-3-14 [[71](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is dismissed without prejudice because it is not ripe for adjudication. On May 21, 2014, the court issued a scheduling order (Dkt. 48) (the "Scheduling Order"). The procedures for discovery-related requests are governed by the Scheduling Order, which states in pertinent

part:

ORDERED, every motion for an order compelling disclosure or discovery and every opposition to such a motion shall be supported by one or more declaration of the party's fees and expenses incurred in preparation of the motion or opposition thereto so the court may make an award contemporaneously with its ruling on the motion, as contemplated by, e.g., FRCP 37(a)(5).

See Scheduling Order at p.4

Federal Rule of Civil Procedure ("FRCP") 37(a)(5) contemplates the payment of expenses and/or sanctions in connection with the granting or denial of a motion for an order compelling disclosure or discovery. However, elsewhere on today's calendar the plaintiff's motion to compel was dismissed without prejudice based on a variety of procedural defects. The court did not issue a ruling on the merits of that motion and, by the very language of FRCP 37(a)(5) and the Scheduling Order, does not reach the issue of sanctions in the instant motion. Accordingly, the motion is not ripe for adjudication and is dismissed without prejudice.

The court will issue a minute order.