UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 11, 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-4 — ALLEN/SHERALYN FISHER — MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC. 11-7-13 [43]

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.

2. 13-33705-D-7 MS-1 — ELIJAH/LIDIYA SUSHINSKIY — MOTION TO AVOID LIEN OF DISCOVER BANK 10-25-13 [5]

Final ruling:

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

3. 13-32910-D-7 GRACE POLAND — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 11-4-13 [10]
TOYOTA MOTOR CREDIT CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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 debtors are 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.

4. 13-30715-D-7 THOMAS FIELDS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1 — 10-11-13 [14]
M&T BANK VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on November 19, 2013 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

5. 12-35618-D-7 DONALD/JULIA CATHEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 11-6-13 [26]
GOLDEN 1 CREDIT UNION VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on January 7, 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.

6. 12-26319-D-7 JEFFREY/DARYA EVANS — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JEFFREY MICHAEL EVANS AND DARYA EVANS
DMW-1 — 11-1-13 [26]

Final ruling:

This is the trustee's motion to approve a compromise of a controversy. The motion will be denied for the following reasons: (1) the proof of service does not state the date of service or the date of execution, and does not bear evidence of signature of the declarant in any manner authorized by LBR 9004-1(c)(1)(A) (that is, the service and execution date lines and the signature line were left blank); and (2) if service was made as stated in the proof of service, the moving party served only the debtors, the debtors' attorney, and the United States Trustee, and failed to serve any of the creditors, as required by Fed. R. Bankr. P. 2002(a)(3).

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

7. 13-33724-D-7 MARK/JENNIFER HORNING — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 11-12-13 [10]
CIG FINANCIAL, LLC VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

8. 13-28329-D-7 DIANE SAUER — MOTION TO DELAY DISCHARGE
CAH-2 — 11-1-13 [18]

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 delay discharge is supported by the record. As such the court will grant the motion to delay discharge. Moving party is to submit an appropriate order. The order submitted must indicate that there will be no further extensions. No appearance is necessary.

9. 13-29030-D-7 WILLIAM/JANET CHENG OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
10-23-13 [105]

Tentative ruling:

This is the objection of Dennis C. Brenning and the Dennis C. Brenning Trust (the "Creditors") to the debtors' claim of exemption of the real property at 623 16th Street, Sacramento, California (the "Property"). The debtors have claimed the Property as exempt in the amount of $450,000, as a "homestead" and, apparently separately, under 11 U.S.C. § 522(b)(2) and (b)(3). The debtors have filed opposition to the objection, and the Creditors have a reply. For the following reasons, the objection will be sustained.

In the column in which they were to identify the law providing for their claim of exemption, the debtors listed:

"(1) Homestead
(2) 522(b)(2)
(3) 522(b)(3)."

None of these provides a valid statutory basis for the claim of exemption. The word "homestead" is not a valid reference to an applicable statute; further, there is no statutory provision that allows a debtor in California to exempt a homestead in the amount of $450,000. Subsection 522(b)(2) of the Bankruptcy Code does not provide for an exemption in this case because it provides for exemptions under § 522(d) of the Code, whereas California has "opted out" of the § 522(d) exemptions. Cal. Code Civ. Proc. § 703.130. Finally, although § 522(b)(3) allows a debtor to exempt property that is exempt under federal law other than § 522(d) or under state or local law, the debtors have not indicated what federal, state, or local law provides a statutory basis for their claim of exemption. Thus, the objection will be sustained.

The debtors' grounds for opposing the objection are unavailing. First, they contend the Creditors are "not a valid creditor." Debtors' Opp., filed Nov. 25, 2013 ("Opp."), at 1:16. The only specifics the debtors provide are conclusory allegations that the Creditors filed fraudulent motions in this court and in state court, and submitted false evidence, and that the Creditors do not have a right to file any motion or objection to exemption. The debtors have provided no supporting evidence or even factual allegations. However, even if they had, the argument would carry no weight. A "party in interest" may file an objection to exemptions (Fed. R. Bankr. P. 4003(b)(1)); here, the Creditors have asserted claims against the debtors, and the holders of "claims," even disputed claims, are creditors (§ 101(10) and (5)). As such, the Creditors have the right to object to the debtors' claims of exemption. The debtors next contend "the state court retains jurisdiction of the Brenning case." Opp. at 1:16-17. That may be; this court, however, unquestionably has jurisdiction of any claims of exemption filed by the debtors in this bankruptcy case, and of any objections to those claims of exemption. The debtors also "oppose Brenning attorney pro hacc [sic] attorney representing Brenning." Opp. at 2:5-6. This court has already approved the Creditors' counsel appearing in this case pro hac vice; further, the debtors have not shown they have any right to object to the representation.

Next, the debtors claim "no creditor can file for any objection to exemptions after more than 4 months of August 341 meeting." Opp. at 1:21-22. They cite no authority for this proposition, and the court is aware of none. In general, the bar date for the filing of objections to a debtor's original claim of exemptions is 30 days after the conclusion of the meeting of creditors. Fed. R. Bankr. P. 4003(b)(1). In this case, the meeting of creditors has not yet been concluded; thus, the bar date has not run. The debtors also complain that the Creditors did not file a motion, and that their notice of hearing is not a motion. The Creditors did not file a document entitled "motion"; instead, they entitled their request for relief an "Objection to Claim of Exemptions," which was appropriate.

Finally, the debtors contend the trustee stated at the meeting of creditors that the debtors "did not have any pre petition and post petition counselings, financial and professional counselings," that the debtors complied with the trustee's instructions and signed a statement to that effect, and that "no creditor has any right to file any motion to contradict" the trustee's statement. Opp. at 2:18-19. The meaning of this argument is unclear; however, in any event, it has no bearing on the Creditors' right to file an objection to the debtors' claim of exemption.

For the reasons stated, the objection to the claim of exemption will be sustained. However, the Creditors have cited no authority for their proposition that the court should impose a deadline by which the debtors must file an amended claim of exemptions, and the court is aware of none. Accordingly, that request is denied.

The court will hear the matter.

10. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO SET ASIDE SEPTEMBER 24, 2013 ORDER
10-7-13 [80]

Tentative ruling:

This is the debtors' motion to set aside this court's order of September 24, 2013 (the "Order"), which requires that the debtors shut down operation of their business known as the Desert Sands Motel, at 623 16th Street, Sacramento, California (the "Motel"), and any other businesses they are operating. The debtors filed the motion on October 7, 2013. They filed a "supplemental motion" on November 4, 2013; the trustee filed a timely opposition on November 26, 2013, and the debtors filed a declaration of debtor Janet Cheng on November 27, 2013. Having reviewed all of these, for the following reasons, the court will deny the motion.

The court will construe the motion as a motion to alter or amend the Order, pursuant to Fed. R. Civ. P. 59(e), incorporated herein by Fed. R. Bankr. P. 9023, or in the alternative, as a motion for relief from the Order, pursuant to Fed. R. Civ. P. 60(b)(6), incorporated herein by Fed. R. Bankr. P. 9024.[1] A Rule 59(e) motion "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." 389 Orange St. Partners v.

Arnold, 179 F.3d 656, 665 (9th Cir. 1999). "[A] motion for reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong." In re Greco, 113 B.R. 658, 664 (D. Hawaii 1990).

Although Rule 60(b) should be liberally applied to accomplish justice, Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007), at the same time, it should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." Id. (citations omitted, internal quotation marks omitted).

The court issued a detailed ruling supporting the Order, which is found in the civil minutes for September 18, 2013, on DC No. SLF-2. The debtors now raise both new issues and issues raised in their opposition to the motion to shut down their businesses. The issues previously raised will not be considered here, as that is not the appropriate function of a motion for reconsideration. The issues newly raised are these: (1) that the debtors did not have any business debts, any consumer debts, or any other debts before they filed the petition commencing this case; (2) that they did not intend to file for chapter 7 protection; (3) that they filed the petition without knowing what they had filed; (4) that debtor Janet Cheng was temporarily insane when she signed and filed the petition; (5) that certain parties who, prior to the filing of the petition, had opposed the debtors in state court are under the jurisdiction of the state court or an appellate court; and (6) that the trustee asked the debtors at the meeting of creditors to affirm that they did not have any financial or professional counseling before they filed, which they did affirm. They cite as surprise and excusable neglect that they did not know the trustee had not filed their written affirmation with the court.[2]

All of these arguments pertain only indirectly to the subject matter of the Order – that the debtors must shut down their operation of the Motel and any other businesses. They pertain directly to the issues involved in the debtors' earlier motion to dismiss this chapter 7 case, the court's order on which is now on appeal by the debtors; thus, this court may not consider them. See Masalosalo v. Stonewall Ins. Co., 718 F.2d 955, 956 (9th Cir. 1983), citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) ("The effective filing of a notice of appeal transfers jurisdiction from the district court to the court of appeals with respect to all matters involved in the appeal.").

Finally, the debtors claim that debtor Janet Cheng is "pending surgery and Hospital expense" (Debtors' Supp. Opp., filed Nov. 4, 2013, at 4:8); that debtor William Cheng does not have kidney function; that "any value of the motel property is for the Chengs medical and hospital expenses" (id. at 4:12-13); and that "it is a life and death medical expenses of the Chengs." Id. at 4:14. Given the strenuousness of the debtors' various attempts to extricate themselves from this chapter 7 case, with no mention of these medical issues except an earlier vague reference to William Cheng's age and "failing health,"[3] the court cannot determine from these self-serving statements that the shutting down of their businesses would deprive the debtors of the means to attend to these matters. Further, the debtors have provided no authority for the proposition that pending medical issues may justify leaving a business open and in operation by a chapter 7 debtor, especially where, as here, the absence of insurance coverage exposes the trustee and the estate to loss and liability. In short, the court concludes that the debtors' present self-serving

statements concerning their health are not sufficient to demonstrate the sort of highly unusual or extraordinary circumstances that would justify setting aside the Order under Rule 59(e) or Rule 60(b).

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

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1 The debtors have not alleged that any of the other five subdivisions of Rule 60(b) applies.

2 It appears the debtors are referring to the standard form that pro se debtors in this district are asked to complete, indicating whether they had any legal assistance in preparing their bankruptcy paperwork.

3 Debtors' Opp. to Motion to Shut Down Business, filed Sept. 9, 2013, at 4:8.

11.	13-29030-D-7 SLF-4	WILLIAM/JANET CHENG	MOTION TO COMPEL DEBTORS TO AMEND SCHEDULES, APPEAR AT THE CONTINUED 341 MEETING, PROVIDE INFORMATION REGARDING PROPERTY OF THE ESTATE, ETC. 11-13-13 [122]

Tentative ruling:

This is the trustee's motion to order the debtors to amend their schedules, to appear at the meeting of creditors, to provide proof of their social security numbers, and to provide information regarding property of the estate, including certain specified documents. The trustee also requests that the court authorize the trustee to obtain the debtors' credit reports and, if necessary, to amend the debtors' schedules and statement of financial affairs. Finally, the trustee requests that the court order the debtors to turn over all rents they have received from their rental properties since the filing of this case, on July 5, 2013. The debtors have filed opposition to the motion, and the trustee has filed a reply. For the following reasons, the motion will be granted in part.

As the trustee points out, the debtors in this case scheduled only one of the four real properties they revealed at the meeting of creditors that they own; they failed to schedule all of their personal property;[1] they failed to schedule all their creditors; they failed to attend several continued sessions of the meeting of creditors, and have failed to provide proof of their social security numbers; and they have failed to comply with the trustee's demands for information about their assets and liabilities.

A bankruptcy debtor has a duty to appear and submit to examination under oath at the meeting of creditors (§ 343 of the Bankruptcy Code),[2] and a duty to file schedules of his or her assets, liabilities, income, and expenses, as well as a statement of his or her financial affairs. § 521(a)(1); Fed. R. Bankr. P. 1007(b)(1). This includes the duty of "careful, complete, and accurate reporting" in those schedules and statements. 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). A bankruptcy debtor also has a duty to cooperate with the trustee as necessary to enable the trustee to perform his or

her duties (§ 521(a)(3)), and a duty to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." § 521(a)(4). The debtors in this case have plainly to fully comply with any of these duties.

Although all bankruptcy debtors have these duties independent of any court order, the court has the power to order recalcitrant debtors to comply. Thus, pursuant to Fed. R. Bankr. P. 2004(a) and (d), the court may order the examination of any entity, including the debtor, and may compel the production of documents. Fed. R. Bankr. P. 2004(c); Fed. R. Bankr. P. 9016. Pursuant to Fed. R. Bankr. P. 1007(k), the court may order the trustee to prepare and file any schedule or statement, other than a statement of intention, that the debtor has not prepared and filed as required by the rule. If a debtor has evaded service of a subpoena or an order to attend for an examination, the court may direct the marshal or other officer authorized by law to bring the debtor before the court for examination, and if necessary, may fix the conditions for further examination and for the debtor's obedience to all orders made in reference to the examination. Fed. R. Bankr. P. 2005(a). (The court does not propose to exercise the latter option at this time; however, the debtors need to be aware of the seriousness of their failure to comply with their duties, and of the court's power to address that failure.)

The debtors raise a number of procedural issues in opposition to the motion, none of which has merit. The trustee gave 28 days' notice of the hearing, as required by LBR 9014-1(f)(1). The debtors claim they received the moving papers seven days later which, excluding Saturday and Sunday, gave them less than four days to file opposition. The trustee followed the local rule; the court does not examine in every case how much time the responding party was left with to prepare his or her opposition. Further, it is clear from their nine-page opposition that the debtors had ample time to respond. The court has no trouble rejecting the debtors' arguments that due process required that they be served with the moving papers personally, rather than by mail, and that, because the debtors do not have access to the Internet, the trustee must serve the court's tentative rulings on them. Pro se debtors are accorded the same rights as debtors represented by an attorney, although their pleadings are held to less stringent standards than an attorney's. The court finds no reason to accord the debtors in this case greater procedural rights than other debtors.

The debtors next complain that the copies they received from the trustee are not the same as the copies he filed – that the copies they received are not readable and have tiny print, with some pages missing. This claim is contradicted by the evidence of the proof of service, in which the declarant testified she served true and correct copies. As against the debtors' self-serving claim, the court accepts the evidence of the proof of service.

The debtors make much of a document the trustee requested they sign at the initial session of the meeting of creditors stating they had not received any legal assistance in filling out their bankruptcy documents, which they did sign. The court summarily dismisses this argument. The debtors chose to file their petition without the assistance of an attorney; this does not make them any less responsible for preparing complete and accurate schedules and statements than a debtor filing with an attorney, or any less able to prepare those documents accurately and completely.

Next, the debtors state their telephone line was not functioning properly for "the pre petition and post petition financial counselings." The court assumes the

debtors are referring to the pre-petition credit counseling and the post-petition financial management course. Neither of those sessions had anything to do with the debtors' duty – independent of those sessions – to prepare complete and accurate schedules and statements – or anything to do with their ability to do so.

Turning to the substance of the motion, the debtors claim the mortgages on their real properties are higher than the property values, and that the trustee has the mortgage amounts from the public records. Neither of these is a sufficient excuse for a debtor to omit properties from his or her schedules or for failing to provide all information called for by the schedules, including names, addresses, dates incurred, and amounts. The debtors also claim they "have not had any rental check." Debtors' Opp., filed Nov. 25, 2013 ("Opp."), at 5:25. However, they add: "The monthly mortgage payments is much more than the rents. Chengs have not been able to pay property tax due to the low amount of rent, the high amount of monthly mortgage payment." Id. at 5:25-28. These statements contradict the statement that the debtors have not had any rental checks. The debtors do not deny that they have failed to respond to the trustee's demand for copies of all rental agreements for their rental properties, and failed to provide an accounting of all rents received for each property in the two years prior to their chapter 7 filing, as was their duty.

The remainder of the debtors' arguments are arguments they made previously, in support of their motion to dismiss this case, or in connection with other motions filed in this case. The court's order denying the debtors' motion to dismiss is on appeal; the court may not consider arguments going to the substance of that motion. As to arguments made in connection with other motions, such as the trustee's application to employ counsel, the orders on those motions are final; the court will not reconsider them now.

Finally, the debtors assert they have a "basic legal right to have a court appointed interpreter." Opp. at 8:23-24. They also claim a basic legal right to have legal counsel. They have cited no authority for either of those propositions, and the court is aware of none. The debtors may provide their own interpreter, who, if sworn to provide an accurate translation of the debtors and the court's questions and statements, may interpret for them at the hearing. The court will not continue the hearing for that purpose, however, this being the first time the debtors have indicated the need for an interpreter.

For the reasons stated, the court concludes that the debtors have failed to comply with their fundamental duties as bankruptcy debtors, that the court has the authority to compel them to do so, and therefore, that the motion will be granted in part. The court will not at this time grant the trustee's request that the debtors be required to turn over all rents received on all of their rental properties since the filing of this case, on July 5, 2013. The debtors have not addressed this request, except to state they have had no rents on one of the properties – the one on Rio Linda Drive in Sacramento. The court finds that this relief was not prominently mentioned in the moving papers sufficiently to provide notice to the debtors. The trustee's points and authorities include a preliminary statement itemizing all the relief requested except turnover of the rents; the request for turnover does not appear until the conclusion, and then, only as the last subdivision in a list of documents requested. Except as so limited, the motion will be granted. (The debtors will be required, as requested by the trustee, to turn over all rental agreements, and to provide an accounting of all rents received.)

The court will hear the matter.

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1 In fact, for every line item on their Schedule B, they hand-wrote in the word "None." And where required in the Statement of Financial Affairs to list all suits and administrative proceedings to which they have been parties within the prior year, the debtors checked the box "None," although one of their first actions in this bankruptcy case was to criticize the trustee's counsel for obtaining continuances of upcoming hearings in a state court action in which the debtors are the plaintiffs.

2 The meeting is not limited to one session, but may be continued from time to time. Fed. R. Bankr. P. 2003(e). "Bankruptcy Rule 2003(e) recognizes that the creditors' meeting can't always be completed in one session." Bernard v. Coyne (In re Bernard), 40 F.3d 1028, 1031 (9th Cir. 1994).

12. 13-33230-D-7 EDWARD ESCOBAR
MRG-1
THE BANK OF NEW YORK MELLON
VS.
Final ruling:

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-5-13 [10]

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.

13. 13-20833-D-11 RAVINDER GILL
UST-1

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-7-13 [59]

14. 13-24537-D-7 HEATHER WATTS
UST-3
Final ruling:

MOTION TO VACATE ORDER GRANTING ASSESSMENT OF FINES
11-7-13 [34]

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 of the United States Trustee for Order Vacating Order on Motion UST-1 of July 25, 2013 is supported by the record. As such the court will grant the Motion of the United States Trustee for Order Vacating Order on Motion UST-1 of July 25, 2013. Moving party is to submit an appropriate order. No appearance is necessary.

15. 13-20638-D-7 ASF-2 — GOLD FORK SD INC — MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S), FEES: $1,982.50, EXPENSES: $308.86
10-31-13 [55]

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.

16. 12-36045-D-7 JRR-1 — TERESA AVALOS — MOTION TO SELL
11-6-13 [20]

17. 13-26954-D-7 UST-1 — DEVIN/MICHELLE DUKE — CONTINUED MOTION FOR ASSESSMENT OF FINES AGAINST, AND FOR FORFEITURE OF FEES BY, DONNA L. CARDOZA
8-27-13 [25]

18. 13-28554-D-7 — CHERYL OHM — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND OBJECTING TO DISCHARGEABILITY OF A DEBT
10-4-13 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of the debtor and objecting to dischargeability of a debt is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtor and objecting to dischargeability of a debt. Moving party is to submit an appropriate order. No appearance is necessary.

19.	09-29162-D-11 09-2543 SHARP ET AL V. CSSS, LP	SK FOODS, L.P. TJD-8	CONTINUED MOTION FOR SUMMARY JUDGMENT 8-15-13 [625]

Final ruling:

The hearing on this motion is continued to December 18, 2013 at 10:00 a.m. No appearance is necessary on December 11, 2013.

20.	09-29162-D-11 09-2692 SHARP V. SSC FARMS I, LLC ET AL	SK FOODS, L.P. MAS-3	MOTION FOR COMPENSATION BY THE LAW OFFICE OF SERLIN AND WHITEFORD, LLP FOR MARK A. SERLIN, RECEIVER'S ATTORNEY(S), FEES: $11,355.50, EXPENSES: $0.00 11-13-13 [1025]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the third interim application for approval of fees and reimbursement of expenses filed by The Law Office of Serlin and Whiteford, LLP for services rendered to the receiver. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

21.	09-29162-D-11 09-2692 SHARP V. SSC FARMS I, LLC ET AL	SK FOODS, L.P. RCG-4	MOTION FOR COMPENSATION FOR ROBERT C. GREELEY, OTHER PROFESSIONAL(S), FEES: $34,416.50, EXPENSES: $0.00 11-13-13 [1031]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Robert C. Greeley for services rendered to Chapter 11 estate. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

22. 09-29162-D-11 SK FOODS, L.P.
DB-26

MOTION FOR COMPENSATION FOR DOWNEY BRAND, LLP, CREDITOR COMM. ATY(S), FEES: $46,864.00, EXPENSES: $168.04
11-13-13 [4531]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the twelfth interim application for approval of fees and reimbursement of expenses filed by Downey Brand, LLP for services rendered to the creditors' committee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

23. 09-29162-D-11 SK FOODS, L.P.
SH-232

MOTION FOR COMPENSATION FOR BRADLEY D. SHARP, CHAPTER 11 TRUSTEE(S), FEES: $959,514.00, EXPENSES: $17,887.22
11-13-13 [4498]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the twelfth interim application for approval of fees and reimbursement of expenses filed by Schnader Harrison Segal & Lewis, LLP for services rendered to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

24. 09-29162-D-11 SK FOODS, L.P.
SH-233

MOTION FOR COMPENSATION FOR BRADLEY D. SHARP, CHAPTER 11 TRUSTEE(S), FEES: $192,579.50, EXPENSES: $2,295.28
11-13-13 [4505]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the thirteenth interim application for approval of fees and reimbursement of expenses filed by Bradley D. Sharp the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

25. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-234 NORTON ROSE, SPECIAL
COUNSEL(S), FEES: $498,569.10,
EXPENSES: $0.00
11-13-13 [4509]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, barristers to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

26. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-235 NORTON ROSE, SPECIAL
COUNSEL(S), FEES: $49,564.00,
EXPENSES: $0.00
11-13-13 [4515]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, on behalf of Andrew Buckland, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

27. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-236 NORTON ROSE FULBRIGHT, SPECIAL
COUNSEL(S), FEES: $88,369.60,
EXPENSES: $0.00
11-13-13 [4519]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, solicitors, on behalf of Peter Collinson SC, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

28. 09-29162-D-11 SK FOODS, L.P.
SH-237

MOTION FOR COMPENSATION BY THE LAW OFFICE OF NORTON ROSE FOR DORAN COOK, SPECIAL COUNSEL(S), FEES: $14,992.31, EXPENSES: $0.00
11-13-13 [4523]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the third interim application for approval of fees and reimbursement of expenses filed by Norton Rose, solicitors, on behalf of Doran Cook, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

29. 09-29162-D-11 SK FOODS, L.P.
SH-238

MOTION FOR COMPENSATION FOR EICHSTAEDT AND LERVOLD, LLP, ACCOUNTANT(S), FEES: $9,265.00, EXPENSES: $0.00
11-13-13 [4527]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the ninth interim application for approval of fees and reimbursement of expenses filed by Eichstaedt & Lervold, LLP. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

30. 09-29162-D-11 SK FOODS, L.P.
SH-239

MOTION FOR ORDER AUTHORIZING PAYMENT FROM PARTIAL JUDGMENT PROCEEDS OF APPROVED INTERIM COMPENSATION OF (1) TRUSTEE, (2) TRUSTEE'S COUNSEL AND (3) COUNSEL FOR CREDITORS' COMMITTEE
11-13-13 [4535]

This matter will not be called before 11:00 a.m.

31. 09-29162-D-11 SK FOODS, L.P. MOTION TO AMEND
10-2014 SH-17 11-13-13 [776]
SHARP ET AL V. SALYER ET AL

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

32. 09-29162-D-11 SK FOODS, L.P. MOTION TO STRIKE PLEADINGS, FOR
10-2016 SH-16 ENTRY OF DEFAULT AND FOR LEAVE
SHARP ET AL V. SKF AVIATION, TO SEEK ENTRY OF DEFAULT
LLC ET AL JUDGMENT
11-13-13 [586]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the motion of the plaintiff, who is the chapter 11 trustee in the case of SK Foods, L.P., in which this adversary proceeding is pending (the "moving party"), to strike the pleadings filed by defendants SKF Aviation, LLC, and CSSS, L.P., dba Central Valley Shippers (the "defendants"), for entry of their defaults, and for leave to seek entry of a default judgment against them. Neither of the defendants has filed opposition. However, because the court is not convinced service of the motion was adequate, the court is not prepared to consider the motion at this time.

The motion was brought on the ground that as a limited liability company and a limited partnership, respectively, the defendants are not permitted to participate in this adversary proceeding in propria persona, and that the defendants have failed to obtain counsel to represent them since their counsel withdrew on May 11, 2012. The moving party served the defendants only at the post office box address of Cary Collins listed as the defendants' last known address in the order authorizing their former counsel's withdrawal from their representation. Although the Secretary of State's website indicates that the agents for service of process of both defendants resigned that capacity in 2009, the website also indicates the defendants continue to have "active" status; that is, they continue to be authorized to do business in California. So far as the court is aware, the defendants, as entities, have not been dissolved.

The moving party failed to serve either defendant at its own address, to the attention of an officer or managing or general agent, as required by Fed. R. Bankr. P. 7004(b)(3) and 9014(b). For this reason, and because of the severity of the relief sought, the motion will be denied without prejudice. In the alternative, the court will continue the hearing to allow the moving party to serve the defendants directly, at their own addresses, to the attention of an officer or managing or general agent.

The court will hear the matter.

33. 13-33962-D-11 LAURA PEZZI

STATUS CONFERENCE RE: VOLUNTARY PETITION
10-31-13 [1]

Final ruling:

This case was dismissed on November 19, 2013. As a result the status conference is concluded. No appearance is necessary.

34. 13-28369-D-7 EDWIN GERBER
FWP-1
MONTICELLO BANKING COMPANY
VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-16-13 [31]

35. 13-31269-D-7 DAVID/FELOMENA ABREU
EAT-1
PHH MORTGAGE CORP. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-13-13 [31]

Final ruling:

This matter is resolved without oral argument. This is PHH Mortgage Corp.'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.

36. 12-20571-D-7 PRITPAUL SAPPAL

MOTION TO AVOID LIEN OF CCM CORPORATION
11-8-13 [96]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CCM Corporation ("CCM"). The motion will be denied for the following reasons. First, the motion and all the moving papers are signed by the debtor, and in the upper left-hand corner of each document, the debtor has listed his own name and address and himself as "pro per," whereas the debtor is not representing himself in propria persona in this case. He is represented by attorney George A. Murphy. There has been no substitution of attorney filed in this case, and no motion by Mr. Murphy to withdraw as the debtor's counsel of record. A debtor may not be represented by an attorney in a

bankruptcy case and, at the same time, file motions as a debtor in propria persona.

Second, the debtor failed to serve CCM in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served CCM Corp. only by having copies of the moving papers personally delivered to "Maggie Goff, HR Generalist on behalf of William C. Meek," whereas there is no evidence to support a conclusion that this constituted service on CCM to the attention of an officer, managing or general agent, or agent for service of process, as required by Fed. R. Bankr. P. 7004(b)(3).

Finally, the debtor served the chapter 7 trustee in this case, but failed to serve her attorney of record in the case.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

37. 12-20571-D-7 PRITPAUL SAPPAL — MOTION TO AVOID LIEN OF MILER AND BECK
11-8-13 [100]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Miller & Beck (now, apparently, MillerHauser Law Group LLP – see below). The motion will be denied for the following reasons. First, the motion and all the moving papers are signed by the debtor, and in the upper left-hand corner of each document, the debtor has listed his own name and address and himself as "pro per," whereas the debtor is not representing himself in propria persona in this case. He is represented by attorney George A. Murphy. There has been no substitution of attorney filed in this case, and no motion by Mr. Murphy to withdraw as the debtor's counsel of record. A debtor may not be represented by an attorney in a bankruptcy case and, at the same time, file motions as a debtor in propria persona.

Second, the debtor failed to serve Miller & Beck or its successor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Miller & Beck only through the attorney who obtained its abstract of judgment, and failed to serve Miller & Beck (or its successor) directly, to the attention of an officer, managing or general agent, or agent for service of process, as required by Fed. R. Bankr. P. 7004(b)(3). The attorney who obtained the abstract of judgment, and who was served with this motion, has appeared in this bankruptcy case on behalf of Miller & Beck (which the attorney indicated is now MillerHauser Law Group LLP) in opposition to an earlier motion to avoid the same judicial lien that is the subject of this motion. However, whereas subd. (1) of Fed. R. Bankr. P. 7004(h) requires service on an FDIC-insured institution through an attorney, if any, who has appeared in the case on behalf of the institution, there is no similar provision in Fed. R. Bank. P. 7004(b)(3) for entities that are not FDIC-insured institutions. In short, the debtor failed to effect proper service on Miller & Beck (or its successor, if its successor is MillerHauser Law Group LLP).

Finally, the debtor served the chapter 7 trustee in this case, but failed to serve her attorney of record in the case.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

38. 13-23371-D-11 JUAN/MARGARITA RAMIREZ — MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
TCS-4 — 11-13-13 [95]

39. 13-23371-D-11 JUAN/MARGARITA RAMIREZ — MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC.
TCS-5 — 11-13-13 [99]

Tentative ruling:

This is the debtors' motion to value collateral of CitiMortgage, Inc., consisting of a first position deed of trust against a duplex property in Lodi, California. (The debtors reside in half of the duplex, and rent out the other half.) CitiMortgage has filed opposition. For the following reasons, the motion will be denied, and the court will fix the value of the property, for purposes of valuing the CitiMortgage's claim, at the amount asserted by CitiMortgage.

The motion is supported by the debtors' declaration, in which they testify as follows: "Based upon our research and knowledge of sales of like property in my neighborhood, and the condition of the improvements on the property, I believe the fair market value of said property at the date of filing was $222,000." Debtors' Decl., filed Nov. 13, 2013, at 2:12-14. In opposition, CitiMortgage has filed a declaration of Sharon Aronson, who is and has been, since 2002, a real estate appraiser. On October 25, 2013, Ms. Aronson conducted an inspection of the property, including its interior, and prepared an appraisal, a copy of which has been filed as an exhibit. Ms. Aronson concludes that the fair market value of the property as of October 25, 2013 is $303,000. As between the testimony of the debtors, who have not shown they have any qualifications in the field of real property valuation, and a professional in the field, the court gives far greater weight to the opinion of the professional. (The debtors' citation to a printout from zillow.com carries little, if any, weight in this analysis.)

Thus, the court concludes that the value of the property is $303,000, which exceeds the amount due CitiMortgage on its deed of trust, $280,887; thus, CitiMortgage's claim is fully secured. The court notes that the motion suggests the debtors may be obtaining their own formal appraisal: "The Debtors and CitiMortgage, Inc. are believed to be obtaining an appraisal of the subject property." Motion, filed Nov. 13, 2013, at 4:1-2. The debtors, however, have controlled the timing of this motion; they chose to wait eight months from the petition date to bring this motion, without obtaining an appraisal in the interim. The local rules of this court require that a motion be supported at the outset by "evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." LBR 9014-1(d)(6). The rules do not provide for a moving party to submit additional evidence after the respondent files his evidence.

The court will hear the matter.

40. 13-23371-D-11 JUAN/MARGARITA RAMIREZ — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
TCS-6 — 11-13-13 [103]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at $365,660, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a deed of trust on real property that is not the debtors' residence. No timely opposition has been filed and the valuation requested in the motion is supported by the record. As such the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at $365,660. The moving party is to submit an order which sets the creditor's secured claim at $365,660. No further relief will be afforded. No appearance is necessary.

41. 13-23371-D-11 JUAN/MARGARITA RAMIREZ — MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
TCS-7 — 11-13-13 [107]

Tentative ruling:

This is the debtors' motion to value collateral of the Bank of New York Mellon (the "Bank"), consisting of a first position deed of trust against a duplex property in Lodi, California. The Bank has filed opposition. For the following reasons, the motion will be denied, and the court will fix the value of the property, for purposes of valuing the Bank's claim, at the amount asserted by the Bank.

The motion is supported by the debtors' declaration, in which they testify as follows: "Based upon our research and knowledge of sales of like property in my neighborhood, and the condition of the improvements on the property, I believe the fair market value of said property at the date of filing was $215,000." Debtors' Decl., filed Nov. 13, 2013, at 2:12-14. In opposition, the Bank has filed a declaration of Teri L. Bridges, who is and has been, for 14 years, a real estate appraiser. On November 19, 2013, Ms. Bridges prepared a drive-by appraisal of the property, including a market comparable analysis, a copy of which has been filed as an exhibit. Ms. Bridges concludes that the estimated market value of the property as of November 19, 2013 is $255,000. As between the testimony of the debtors, who have not shown they have any qualifications in the field of real property valuation, and a professional in the field, the court gives far greater weight to the opinion of the professional. The fact that Ms. Bridges' appraisal was based on an exterior-only inspection of the property is not sufficient for the debtors' valuation, which appears to have been based primarily on their alleged knowledge of sales of like property in the neighborhood, as to which they are not qualified to testify, to prevail over Ms. Bridges'.

The debtors' valuation, $215,000, is exactly the same as the value fixed by this court in a prior case. (The debtors have filed a copy of the court's minute order in that case in support of the present motion.) The court finds that the value of the property almost a year before the present case was filed has virtually no bearing on the value of the property today. The debtors' citation to a printout from zillow.com carries little weight; if anything, it supports the conclusion that the debtors' valuation is too low.

For the reasons stated, the court concludes that the value of the property is $255,000. The Bank has filed a proof of claim in the amount of $289,972.30; thus, the court concludes that the Bank has a secured claim in the amount of $255,000, and an unsecured claim in the amount of $34,972.30.

The court will hear the matter.

42. 13-34277-D-7 JUSTIN STANBRA
TC-33
FIRST TECH FEDERAL CREDIT UNION VS.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-13-13 [15]

Final ruling:

This matter is resolved without oral argument. This is First Tech Federal Credit Union'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.

43. 10-30583-D-7 STEVEN LONG
DNL-19

Final ruling:

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEE'S ATTORNEY(S), FEES: $67,861.50, EXPENSES: $5,461.13
11-13-13 [482]

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

44. 13-26683-D-7 JILL SPOONER
RLY-1

OBJECTION TO CLAIM OF JILL AND DENNIS SPOONER, CLAIM NUMBER 6
10-30-13 [51]

Final ruling:

The hearing on this motion is continued to December 18, 2013 at 10:00 a.m. No appearance is necessary on December 11, 2013.

45. 13-26683-D-7 JILL SPOONER
RLY-2

OBJECTION TO CLAIM OF JILL AND DENNIS SPOONER/ SPOONER & SONS, CLAIM NUMBER 7
10-30-13 [56]

Final ruling:

The hearing on this motion is continued to December 18, 2013 at 10:00 a.m. No appearance is necessary on December 11, 2013.

46. 13-29787-D-7 DENNIS/JOSI SKIBY
PPR-1
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-30-13 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

47. 13-28288-D-11 MICHAEL MATRACIA
UST-2

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
11-12-13 [54]

48. 13-29792-D-7 TERRI HALL
NATIONSTAR MORTGAGE, LLC VS.

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
10-30-13 [14]

Final ruling:

This is the motion of Nationstar Mortgage, L.L.C. ("Nationstar"), for an order confirming that the automatic stay has terminated by reason of the trustee's abandonment of Nationstar's collateral. For the following reasons, the motion will be denied.

First, the moving papers do not include a docket control number, as required by LBR 9014- 1(c). Second, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. Third, the notice of motion, motion, and proof of service were all filed as a single document, rather than separately, as required by LBR 9014-1(d)(2) and (e)(3) and Guideline 3(a) of the court's Revised Guidelines for the

Preparation of Documents, made mandatory by LBR 9004-1(a). Fourth, the motion is premature. The motion seeks an order, pursuant to § 362(j), confirming that the automatic stay has terminated with respect to certain real property Nationstar contends is collateral for its claim (the "property"). For its premise that the automatic stay has terminated, Nationstar relies on (1) § 362(c)(1), which provides that the stay of an act against property of the estate continues until such property is no longer property of the estate; and (2) the trustee's report of no distribution, filed September 5, 2013, which, according to Nationstar, reflects the trustee's intention to abandon the property. The problem is that an intention to abandon property and actual abandonment are two different things. At this point in the case, the property has not been abandoned, and there is nothing preventing the trustee from changing his mind and deciding to administer the property. Unless earlier formally abandoned after notice and a hearing, pursuant to § 554(a) or (b), the property will not be abandoned until the case is closed. See § 554(c).

To the extent, if any, Nationstar intended this motion to operate as a motion to compel the trustee to abandon the property, the motion will be denied because that intention is not clear from the moving papers and also because the moving party failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of the rule. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)). Nationstar served the debtor, the debtor's attorney, the chapter 7 trustee, and the United States Trustee, and failed to serve creditors.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

49. 13-21595-D-7 PATRICIA CUNNINGHAM — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
PA-6 — 9-27-13 [120]

Tentative ruling:

This is the trustee's objection to the claim of exemptions filed by the debtor's successor in interest on August 29, 2013. The debtor's successor has filed opposition. For the following reasons, the objection will be sustained in part and overruled in part.

The trustee objects to the claim of exemption of three bank accounts – a money market account containing $230.82, a share account containing $509.96, and a checking account containing $9,570.79. Of that $9,570.79, the trustee does not object to the claim of exemption of $1,785 under 42 U.S.C. § 407 (social security); he does object to the exemption of the balance, $7,785.79. The debtor's successor has claimed the funds in the accounts as exempt under various federal and state statutes providing for the exemption of social security benefits and retirement funds, as discussed below.

For all three accounts, the trustee's objection presents a problem of tracing the sources of the funds remaining in the accounts as of the petition date, February

6, 2013. The trustee has submitted copies of the debtor's bank statements, which show the following:

The Money Market Account. Of the funds remaining in the account, a total of $230.82:

- $0.18 came from dividends on the funds in the account (paid by Travis Credit Union);

- $17.72 came from a November 7, 2012 transfer from the share account, of which, in turn, $13.37 came from dividends and debit card rewards (paid by Travis Credit Union) and the balance, $4.35, was in the account as of June 1, 2012 – as to the source of those funds, neither party has presented any evidence or any contention;

- $212.92 came from a November 7, 2012 transfer from the checking account, which in turn came from a payroll deposit into the checking account on October 30, 2012. (There was a subsequent $300 deposit into the checking account from an Edward Jones account described on the checking account statement as "9044 CCD"; however, using a first-in, first-out analysis (neither party has suggested a different method), the entire amount transferred to the money market account on November 7, 2012 constituted funds remaining from the payroll deposit; none represented funds from the subsequent Edward Jones transfer.)

There is no indication any of the funds in the money market account as of the petition date came from either social security benefits or retirement funds; thus, the trustee's objection to the claim of exemption of those funds under 42 U.S.C. § 407 (social security) and 11 U.S.C. § 522(b)(3)(C) (retirement funds) will be sustained. As those are the only two statutes under which the debtor's successor claims an exemption in those funds, the exemption will be disallowed.

The Share Account. Of the funds remaining in the account, a total of $509.96:

- Those funds either came from dividends or debit card rewards or had been in the account since June 1, 2012; there were no other deposits or transfers into the account after that date. The court has no evidence of that account prior to June 1, 2012, and as the debtor's successor had sufficient notice of the trustee's evidence, and presumably, access to the debtor's records, but offered no evidence as to the source of the funds in the account as of that date, the trustee's objection will be sustained as to the entire amount.

The Checking Account. Of the funds remaining in the account, a total of $9,570.79:

- $1,785 was from the direct deposit of the debtor's first social security payment on January 15, 2013. The debtor's successor has claimed that amount, $1,785, as exempt under Cal. Code Civ. Proc. 704.080 and has claimed the same amount, $1,785, a second time as exempt under 42 U.S.C. § 407.[1] It is clear from the evidence that before the petition was filed, the debtor received only a single social security payment – her first one, in the amount of $1,785, which was deposited to the checking account by the Social Security Administration on January 15, 2013. Thus, only a single exemption will be allowed. Both statutes cited by the debtor permit the exemption of social security benefits. The trustee has expressly not objected to the claim of exemption under 42 U.S.C. § 407. He objects, however, to the Cal. Code Civ Proc. § 704.080 exemption as duplicative; as the checking account contained only a single social security payment, that objection

will be sustained.

• The balance, $7,785.79 (except for a $6.44 store return credit), came from the January 6, 2013 deposit into the account of $12,526 from the debtor's IRA at Edward Jones. The debtor's successor claims the $7,785.79 balance as exempt under (1) Cal. Code Civ. Proc. §§ 704.115(a)(1) and (2) and 704.115(b); (2) Cal. Code Civ. Proc. § 704.080; and (3) 11 U.S.C. § 522(b)(3)(C).[2] The trustee objects to all of these claims. Taking the second one first, Cal. Code Civ. Proc. § 704.080 does not apply, as that code section provides for the exemption of social security benefits, whereas by the time the petition was filed, the debtor had received only one social security benefit payment, the one the debtor's successor has already exempted under 42 U.S.C. § 407, to which the trustee has not objected. None of the remaining $7,785.89 came from social security benefits.

Next, 11 U.S.C. § 522(b)(3)(C) provides for the exemption of retirement funds to the extent they are "in a fund or account that is exempt from taxation" under one of several enumerated sections of the Internal Revenue Code. The trustee contends this subdivision does not apply in "opt-out" states such as California. However, § 522(b)(3)(C) is available to all bankruptcy debtors, even those in opt-out states. Mullen v. Hamlin (In re Hamlin), 465 B.R. 863, 870 (9th Cir. BAP 2012); In re Thiem, 443 B.R. 832, 837 (Bankr. D. Ariz. 2011); In re Patrick, 411 B.R. 659, 664 (Bankr. C.D. Cal. 2008). Neither party has addressed the question whether the debtor's "cash-out" of the IRA, which she accomplished by having the $12,526 transferred from the IRA into her checking account, resulted in those funds losing their character as funds "in a fund or account that is exempt from taxation," as apparently required for § 522(b)(3)(C) to apply. Neither party has cited any authority as to whether California's tracing statute, Cal. Code Civ. Proc. § 703.080(a), applies to the proceeds of a fund claimed as exempt under a federal law, such as 11 U.S.C. § 522(b)(3)(C).

However, the court need not determine whether § 522(b)(3)(C) applies here because the debtor's successor is entitled to claim the funds as exempt as proceeds of a private retirement plan under Cal. Code Civ. Proc. § 704.115(a)(3). For some reason, the debtor's successor did not claim the funds as exempt under § 704.115(a)(3), only under (a)(1) and (a)(2).[3] For some reason, however, the trustee did not challenge the claim of exemption on that basis, but only on the grounds that (1) the debtor cashed out her IRA prior to filing this bankruptcy case, and thus, the funds "cannot possibly be exempted as a private retirement account";[4] and (2) because the debtor is deceased, her successor cannot meet the requirement of § 704.115(e) that the funds be necessary for the support of the debtor or a dependent during the debtor's retirement.

The trustee is wrong on both counts. First, the trustee has given the court no reason to suppose California's tracing statute, Cal. Code Civ. Proc. § 703.080(a), does not apply to funds derived from an exempt IRA, and in fact, the tracing statute has been held to be applicable to funds traced back to a retirement account exempt under § 704.115. McMullen v. Haycock, 147 Cal. App. 4th 753, 757-61 (2007). It would be anomalous indeed if a 63-year debtor, such as the debtor in this case, could exempt funds in an IRA so long as they remained in the IRA, but could not exempt them if she took them out of the IRA to assist with her support after she had retired, as had the debtor here. Further, Cal. Code Civ. Proc. § 704.115(d) provides that after payment, the amounts held, controlled, or in process of distribution by a private retirement plan are exempt. Thus, the fact that the debtor cashed out the IRA prior to filing this case has no bearing on the matter.

Finally, the court rejects the trustee's argument that because the debtor is

deceased and had no dependents, the funds cannot have been necessary for the debtor's support. The argument overlooks the fact that a bankruptcy debtor's exemption rights are determined as of the petition date. See Little v. Reaves (In re Reaves), 285 F.3d 1152, 1156 (9th Cir. 2002). (To the extent, if any, the trustee is relying here on the court's earlier decision regarding the debtor's claim of a homestead exemption, the distinction is that the debtor's homestead exemption rights, as of the petition date, were, by the terms of the statutes that created them, explicitly subject to a reinvestment requirement, whereas there is no such requirement with respect to the exemption of an IRA or its proceeds.)

At the time she filed this case, the debtor's income was limited to social security payments and pension income, a total of $2,322 per month; her expenses, as listed on her Schedule J (which the court finds to be modest in amount), totaled $2,436, leaving her with a deficiency of $113 each month. Given that she died just over a month after the bankruptcy filing, and was ill at the time of the filing, the argument could be made, the court supposes, that the funds were not necessary for her support. This conclusion, however, would require the court to speculate about how long the debtor was likely to live after the bankruptcy filing. This the court declines to do. Given the relatively small amount in the checking account, and given the relatively small values of the debtor's other assets, the court concludes that the funds in the checking account were, as of the petition date, reasonably necessary for the debtor's support in retirement.

For the reasons stated, the trustee's objection will be sustained in part, and the claim of exemption of the funds in the money market account and the share account will be disallowed. The duplicate claim of exemption of the $1,785 social security payment will be disallowed. As to the funds in the checking account, the objection will be overruled. The court will hear the matter.

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1 The debtor's successor lists the exemption claims as follows:

C.C.P. § 704.080	$1,785
42 U.S.C. § 407	$1,785

Thus, it appears she is attempting to claim two separate amounts – of $1,785 each, rather than claiming a single amount of $1,785 as exempt under two different statutes.

2 Actually, for all three of those statutes, the debtor's successor lists the value of the claimed exemption as $12,856; the court cannot determine where that figure comes from.

3 The three subdivisions of § 704.115(a) cover three different types of private retirement plans. Plans under subdivision (1) are limited to retirement plans "established or maintained by private employers or employee organizations, such as unions" (see Lieberman v. Hawkins (In re Lieberman), 245 F.3d 1090, 1095 (9th Cir. 2001)), whereas subdivision (3) covers "self-employed retirement plans and individual retirement accounts and annuities" (id. at 1094), and subdivision (2) covers yet another kind of private retirement plan, a profit-sharing plan designed and used for retirement purposes. Id. Subdivision (3) is the provision applicable to IRAs, such as the debtor's (see Dudley v. Anderson (In re Dudley), 249 F.3d 1170, 1175 (9th Cir. 2001)), not subdivision (1) or (2).

4 Trustee's Objection, filed Sept. 27, 2013, at 8:23-24.

50. 13-31597-D-11 FREDRICK HODGSON
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-3-13 [1]

51. 12-33698-D-11 2 ANTIOCH, LLC
12-2705
2 ANTIOCH, LLC V. ANTIOCH LOAN, LLC ET AL
CONTINUED MOTION FOR SUMMARY JUDGMENT OR FOR PARTIAL SUMMARY JUDGMENT
9-27-13 [38]

This matter will not be called before 10:45 a.m.

52. 13-31598-D-7 WOODBRIDGE AT PORTOLA, INC.
GDC-1
R.E. LOANS, LLC VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
11-6-13 [26]

Final ruling:

This matter is resolved without oral argument. This is R.E. Loans, LLC'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.

53. 13-31701-D-7 SEUNG CHAN KWON AND JUNG EUN LEE
OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION BY RONALD VERONDA AND ACELA AMADOR
11-18-13 [15]

54.	13-34106-D-7 SJS-1	DANIEL GORDON	MOTION TO DISMISS DUPLICATE CASE 11-15-13 [10]

Final ruling:

This is the debtor's motion to dismiss this case as a duplicate case. The motion will be denied because the service list attached to the proof of service is from a different case entirely – a chapter 13 case of a different debtor who has, as far as the court can tell, no relation to this debtor except that both are represented by the same attorney. As a result, the creditors in this case were not served, and the chapter 7 trustee in this case was not served.

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

55.	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]

56.	13-29928-D-7	ARMANDO SANCHEZ	MOTION TO WAIVE FILING FEE 11-20-13 [46]

57.	13-29030-D-7 SLF-5	WILLIAM/JANET CHENG	MOTION TO EMPLOY TURTON COMMERCIAL REAL ESTATE AS REALTOR(S) 11-22-13 [136]

Tentative ruling:

This is the trustee's motion to employ Ken Turton, of Turton Commercial Real Estate, as his broker to value, market, and possibly list for sale certain property of the estate. The debtors have filed opposition to the motion, which will be

addressed below. For the following reasons, the court is not prepared to grant the motion at this time.

Mr. Turton's declaration in support of the motion is not sufficient to permit the court to conclude that he is a disinterested person and that he does not hold or represent an interest adverse to the estate. Mr. Turton draws his own conclusion that he does not hold or represent an interest adverse to the estate, based on the following statements:

(1) [He is] not a creditor, an equity security holder, or an insider of the Debtors;

(2) [He is] not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the Debtors;

(3) [He does] not have an interest materially adverse to the interest of Trustee, the estate, or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors or Trustee; and

(4) [He does] not have any connection with the Debtors, the Chapter 7 Trustee, the United States Trustee's Office, or any person employed in the United States Trustee's Office.

Ken Turton Decl., filed Nov. 22, 2013, at 2:21-3:2.

These statements are not sufficient. The conclusions that a professional "does not hold or represent an interest adverse to the estate" and "does not have an interest materially adverse to the interest of Trustee, the estate, or any class of creditors or equity security holders" are not the professional's to draw, they are the court's. The professional's job is to disclose "all of [his or her] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. P. 2014(a); LBR 2014-1. Mr. Turton's statement (4), above, satisfies this requirement with respect to the debtors, the chapter 7 trustee, the U.S. Trustee's office, and employees of the U.S. Trustee's office, but not with respect to creditors, other parties in interest, or the respective attorneys and accountants of the debtors, the chapter 7 trustee, creditors, and all other parties in interest. For this reason, the court will grant the motion only upon submission of supplemental evidence of Mr. Turton.

The debtors' various objections are rejected. Most of their arguments pertain to other matters, including their motion to dismiss this case, which is on appeal, and other motions that have been filed in this case, the rulings on which are now final. The debtors' arguments that are unique to this motion are frivolous. They claim "Notice of Trustee Richards must have a motion for such important case of employment of Ken Turton as his trustee realtor. Trustee Richards did not submit any motion for this present case." Debtors' Opp., filed Dec. 5, 2013 ("Opp."), at 1:17-21. This appears to be a reference to the fact that the trustee entitled his motion an "application" rather than a "motion." "This is a purely semantic distinction" (Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1191 (9th Cir. 2011)), as the two words are "generally considered synonymous." Id. The debtors also complain that "Chengs must have more than 28 days to file and submit evidences and statements etc for an opposition for a motion." Opp. at 1:28-29. However, the court's local rules do not require 28 days' notice; 14 days' notice is sufficient for a motion to which

**no written opposition will be required. The trustee's notice of hearing complied with LBR 9014-1(d)(3) in
that it stated that no party-in-interest would be required to file written opposition, and it complied with LBR 9014-1(f)(2) in that more than 14 days' notice was given.**

The court will hear the matter.

58.	10-47536-D-7 CDH-1	DOUGLAS KIRKWOOD	MOTION TO ABANDON 11-20-13 [49]

This matter will not be called before 11:15 a.m.

Tentative ruling:

This is the trustee's motion to abandon certain property of the estate; namely, the debtor's interest in a monetary recovery in a class action lawsuit. The motion was noticed under LBR 9014- 1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court finds that the notice of hearing, which is the only document served on creditors, was too vague to "sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion," as required by LBR 9014- 1(d)(4).

The notice of hearing states only that the trustee is seeking an order authorizing "the abandonment of the estate's interest in a class action lawsuit." This is the virtual equivalent of no information at all. Thus, the court intends to deny the motion. In the alternative, the court will continue the hearing to allow the moving party to file and serve a notice of continued hearing that contains sufficient information to comply with LBR 9014-1(d)(4).1

The court will hear the matter.

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1 The court notes also that, although the notice of hearing states that parties wishing to oppose the motion must attend the hearing, it does not contain the language required by LBR 9014-1(d)(3), advising that no written opposition is required. The moving party will need to correct this defect in the notice of continued hearing.

59.	10-47536-D-7 CDH-2	DOUGLAS KIRKWOOD	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DOUGLAS B. KIRKWOOD 11-20-13 [54]

This matter will not be called before 11:15 a.m.

Tentative ruling:

This is the trustee's motion to approve his compromises with the debtor as to the respective interests of the estate and the debtor in two different state court lawsuits. The motion was noticed under LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court finds that the notice of hearing, which is the only document served on creditors, was too vague to "sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion," as required by LBR 9014-1(d)(4).

The notice of hearing states only that the debtor has agreed not to amend his exemptions, that he has listed exemptions in an amount in excess of an anticipated payout from a class action lawsuit, which lawsuit is therefore of inconsequential value to the estate, and that the debtor will be entitled to 5% of any recovery in another lawsuit filed by debtor, in exchange for which the debtor will actively cooperate and participate in the ensuing litigation. The notice provides no information about either lawsuit or about the debtor's or the estate's interests in them. Thus, the court intends to deny the motion. In the alternative, the court will continue the hearing to allow the moving party to file and serve a notice of continued hearing that contains sufficient information to comply with LBR 9014-1(d)(4).1

The court will hear the matter.

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1 The court notes also that, although the notice of hearing states that parties wishing to oppose the motion must attend the hearing, it does not contain the language required by LBR 9014-1(d)(3), advising that no written opposition is required. The moving party will need to correct this defect in the notice of continued hearing.

60.	11-49543-D-7 VMD-1	ONESIMO/VANESSA DE LA TORRE	MOTION TO AVOID LIEN OF NETWORK COMMERCIAL SERVICE, INC. AND OF BUTTE COUNTY CREDIT BUREAU A CORP., 11-25-13 [25]

61. 09-29162-D-11 SK FOODS, L.P. MOTION TO PAY
TJD-2 11-27-13 [4568]

This matter will not be called before 11:00 a.m.

62. 13-33371-D-7 RICHARD EVANS MOTION FOR RELIEF FROM
DBR-2 AUTOMATIC STAY
HAROLD ELLIS VS. 11-20-13 [16]

63. 13-26373-D-7 APRIL FLORES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-21-13 [40]

64. 13-30483-D-7 GARY/SHARON SPARKS MOTION TO CONVERT CASE FROM
TOG-2 CHAPTER 7 TO CHAPTER 13
10-28-13 [41]

Tentative ruling:

This is the debtors' motion to convert this case from chapter 7 to chapter 13. The trustee opposes the motion; the debtors have filed a reply. For the following reasons, the motion will be denied; alternatively, the court will continue the hearing to allow the debtors to supplement the record.

As the trustee points out, the debtors elected to file this case as a chapter 7, on August 8, 2013. At that time, they applied for and were granted a waiver of the filing fee. The debtors' original Schedules I and J showed virtually no excess income from which they might fund a chapter 13 plan. Their Schedule C, however, showed claims of exemptions under Cal. Code Civ. Proc. § 703.140(b)(5)[1] – the so-

called wild card, exceeding the maximum allowable by $22,383. The trustee objected to those exemptions on that basis. The debtors did not oppose the objection or appear at the hearing, and the objection was sustained. The trustee also sought an order directing the debtors to turn over the non-exempt property, which was granted. The trustee then served the order sustaining the objection and directing turnover, but the debtors did not comply.

Instead, six days after the order was served, the debtors, through new counsel, filed this motion to convert the case; they also filed amended Schedules I and J on which they added income of $600 per month in the form of a contribution from their son, and increased their expenses by $290, for new monthly net income of $310. The motion to convert the case alleges only that the debtors filed this case in propria persona and selected the wrong chapter, and that they need to be in a chapter 13 in order to keep their home and their vehicles.

The trustee cites Marrama v. Citizens Bank, 549 U.S. 365, 371 (2007), which held that debtors may by their conduct forfeit the right to convert their case from chapter 7 to chapter 13. The trustee contends the debtors in this case forfeited that right by what the trustee characterizes as bad faith conduct; that is, by filing this motion only after the trustee served the turnover order and less than four months after the debtors declared under oath they lacked the income even to pay the filing fee of $306, even in installments. The trustee adds that the debtors declared they did not expect their income to increase by more than 10%, whereas the amended Schedule I shows their income as increased by nearly 30%. These facts, the trustee claims, show bad faith and an improper motive.

The court is not convinced. It is significant that the debtors filed this case in propria persona, and also, that the trustee has not charged them with attempting to conceal assets. The court also does not believe that the debtors' representation that they did not expect their income to increase was misleading or inaccurate when made. In fact, their income has not increased, at least not from any source the debtors might reasonably have expected at the time of filing. This appears to be simply a case of debtors who discovered too late that they could not shield all of their assets in a chapter 7 case; thus, they apparently decided to seek help from their son, and were fortunate enough to get it.

On the other hand, it appears from the debtors' schedules as presently filed that they will not be able to meet the liquidation test in a chapter 13 case. The court notes that, although the debtors have now retained counsel, they have not amended their Schedule C to claim any exemptions under the wild card. The trustee's objection to their exemptions had the effect of disallowing all the exemptions claimed under the wild card because the debtors had claimed a group of assets having a value in total that exceeded the allowable maximum, and neither the trustee nor the court had the ability to choose which assets the debtors should be allowed to keep as exempt and which ones they should have to give up. In other words, under the circumstances, the court had no ability to allow the debtors any exemptions at all under the wild card, whereas they obviously have the right to claim whatever assets they choose as exempt up to the maximum amount.

Nevertheless, it appears that if the debtors' Schedules A and B, as presently filed, are correct, they will not be able to meet the liquidation test in a chapter 13 no matter what exemptions they claim on an amended Schedule C.[2] If the debtors claimed their residence as exempt under § 704.730, they could claim only $2,900 in vehicles, whereas they have $34,365 in value in vehicles; thus, they would have to pay $31,465 (plus trustee compensation) in a chapter 13 in order to meet the

liquidation test. On the other hand, if they claimed the § 703.140(b) exemptions, they would be limited to $5,100 in one vehicle plus $26,925 for the house and the other vehicles (under the wild card), for a total of $32,025, whereas those assets total $53,979 in value. Thus, the debtors would have to pay $21,954 (plus trustee compensation) to meet the liquidation test. By contrast, given the figures on their amended Schedules I and J (that is, with their son's contribution), the debtors would be able to pay only $18,600 over the course of a 60-month plan ($310 per month x 60), or $16,740 to unsecured creditors (after deduction of trustee compensation).

The debtors have filed a reply in which they request a short continuance to allow them to file medical records. The court is inclined to grant that request, but will require the debtors also to supplement the record by filing as an exhibit a proposed chapter 13 plan and addressing whether they would have a chance at confirmation despite their apparent inability to meet the liquidation test. They should also address the trustee's contention that they have not shown their son has the ability and willingness to contribute the $600 per month to help fund the plan.

Finally, the court recognizes that the debtors delayed taking any action until the trustee had incurred the expense of objecting to their exemptions and seeking turnover of the non-exempt assets; the court makes no determination at this time as to whether the trustee and his counsel would be allowed administrative claims in the debtors' chapter 13 case, if this motion is granted.

The court will hear the matter.

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1 All statutory references are to the California Code of Civil Procedure.

2 The court would be surprised to learn that these schedules, especially Schedule A, are correct. Schedule A lists the value of the debtors' residence as $19,614, whereas even given decreased property values in recent years, it seems highly unlikely the debtors' residence has such a low value. Further, the debtors have listed no secured creditors; obviously, the analysis below would change if that is incorrect. The court does not mean to suggest any deceit on the part of the debtors in these schedules; it appears merely that, as pro se debtors, they may not have understood how to complete the schedules. Again, there is no evidence they have tried to conceal assets.

65.	10-37391-D-7 MHK-1 BIG VALLEY FEDERAL CREDIT UNION VS.	MICHAEL SPENCER	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-26-13 [31]

66. 12-33698-D-11 2 ANTIOCH, LLC
12-2705 DTK-2
2 ANTIOCH, LLC V. ANTIOCH LOAN, LLC ET AL

CONTINUED PLAINTIFF'S MOTION TO DISMISS ADVERSARY PROCEEDING
O.S.T.
11-4-13 [75]

This matter will not be called before 10:45 a.m.

67. 12-33698-D-11 2 ANTIOCH, LLC
DTK-2

CONTINUED MOTION TO DISMISS CASE O.S.T.
11-4-13 [142]

This matter will not be called before 10:45 a.m.

68. 12-39999-D-11 PHILLIPS DELIVERY
WFH-17

MOTION FOR FINAL DECREE
11-27-13 [196]

69. 13-21199-D-7 JAMES SCOTT
DNL-11

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BANK OF AMERICA, N.A.
11-20-13 [221]

Tentative ruling:

This is the trustee's motion to approve his compromise with the Bank of America. The motion was noticed under LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court finds that the notice of hearing, which is the only document served on creditors, was too vague to "sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion," as required by LBR 9014-1(d)(4).

So far as the background of the dispute being compromised and the basis for and terms of the compromise are concerned, the notice of hearing states only the following:

> [T]he Trustee shall use the estate's controlling interest in J. W. Scott Co's, Inc. ("JWSC") to cause JWSC to consent to a sale of 1111 H Street, Sacramento, California ("Retrolodge I Property"), as to its 10% interest, and 1029-1031 H Street, Sacramento ("Retrolodge II Property"), as to its 50% interest, by Terrence S. Daly ("Receiver"). Provided that (1) the trustee causes JWSC to consent to a sale of the Retro Lodge Properties by the Receiver, and (2) the Receiver closes a sale of the Retro Lodge Properties, then within 14 calendar days of the closing of any sale of the Retro Lodge Properties by the Receiver, the Bank shall cause its Proof of Claim # 18-1 to be withdrawn with prejudice. The Bank and the Trustee will exchange limited mutual releases. JWSC will provide the Bank with a release in return for a covenant not to sue.

Notice of Hearing, filed Nov. 20, 2013, at 1:24-2:5.

The court reviewed the notice of hearing first, before reviewing the motion or any of the other moving papers, and concludes that creditors reviewing only the notice of hearing, unless they had independent knowledge of the background of the dispute and the basis for the compromise, would be bewildered by the information presented in the notice of hearing. Simply put, the information provided in the notice of hearing is insufficient to notice parties of the proposed compromise. Thus, the court intends to deny the motion. In the alternative, the court will continue the hearing to allow the moving party to file and serve a notice of continued hearing that contains sufficient information to comply with LBR 9014-1(d)(4).

The court will hear the matter.