UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

March 11, 2014 at 9:32 A.M.

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1. 13-30690-B-11 WILLIAM PRIOR — MOTION TO EXTEND PLAN EXCLUSIVITY PERIOD
HLC-2 — 2-10-14 [68]

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

The motion is granted. Pursuant to 11 U.S.C. § 1121(d)(2)(B), the 180 day period specified in 11 U.S.C. § 1121(c)(3) is extended from February 10, 2014, to and including May 12, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

2. 13-30690-B-11 WILLIAM PRIOR — AMENDED MOTION TO EMPLOY CBRE, INC. AS BROKER(S)
HLC-3 — 2-25-14 [80]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the debtor's request to employ CBRE, Inc. ("CBRE") as real estate broker for the estate is granted on the terms and conditions set forth in the motion. CBRE's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

In the absence of opposition, the court finds that CBRE is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

Counsel for the debtor shall submit an order approving employment of CBRE that conforms to the foregoing ruling.

3. 08-22725-B-11 IRS-1 — BAYER PROTECTIVE SERVICES, INC. — MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 2-14-14 [750]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. As the debtor filed written opposition to the motion, the court issues the following tentative ruling.

The debtor's opposition is overruled. The motion is granted. The bankruptcy case is converted to one under chapter 7. Except as so ordered, the motion is denied.

Turning to the substance of the motion, the United States trustee (the "UST") seeks dismissal or conversion of this case for cause pursuant to 11 U.S.C. § 1112(b). Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) also limits the foregoing directive in several ways:

First, under section 1112(b)(2), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(1), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(3) requires that, absent the UST's consent or compelling circumstances that prevent the court from meeting the requirements of the subsection, the court must commence a hearing on the motion within thirty (30) days after it is filed and must decide the motion within fifteen (15) days after the hearing is commenced. This motion was filed on January 6, 2014, and the UST set this motion for hearing on February 11, 2014, the first available calendar date for a 28-day motion filed under LBR 9014-1(f)(1). The UST's action in setting the hearing more than thirty days after it was filed constitutes movant's consent to hearing the motion more than thirty days after it was filed. The decision on this matter will take place within fifteen-day days after the hearing is commenced.

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." The court has the discretion to consider cause not specifically listed under § 1112(b). Cause may include unreasonable delay that is prejudicial to creditors. In re Consolidated Pioneer Mortg. Entities, 264 F.3d 803, 808-09 (9th Cir. 2001).

The court finds, for the reasons stated in the motion, that the movant, the Internal Revenue Service of the United States (the "Service") has established cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(A), (B), (I), and (N). Specifically, the Service has shown that the debtor and/or its principal have caused the debtor to engage in an unusually high number of consumer transactions that are inconsistent with and/or unnecessary for the continued operation of the debtor's business under the terms of the confirmed plan. The Service has shown that the debtor has materially defaulted under the terms of its confirmed plan by failing to make quarterly payments to the plan administrator since the quarterly payment made on April 30, 2013. The Service has also shown that the debtor has failed to timely pay taxes owed after the date of the order for relief.

The court further finds that the debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. The debtor has failed to establish any of the requirements of section 1112(b)(2)(A) or (B).

The debtor's opposition is not persuasive. The debtor does not dispute the Service's allegations of cause for dismissal, and admits that it is unlikely that it will be unable to complete the plan as confirmed. The debtor requests a 60 to 90 day continuance for the purpose of allowing the debtor and/or its principal to seek out a buyer for the debtor's book of business. However, given the undisputed evidence presented by the Service, a continuance of the motion would expose the debtor to a significant risk of continued diminution of its assets. A chapter 7 trustee will be able to explore options for a sale of the debtor and/or its book of business.

The court finds that conversion, rather than dismissal of the case is in the best interests of the creditors and the estate. As set forth in the motion and the opposition, the debtor's business may have value that can be realized through a sale to an appropriate buyer.

The court will issue a minute order.

4. 08-22725-B-11 UST-2 — BAYER PROTECTIVE SERVICES, INC. — MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
1-31-14 [740]

Tentative Ruling: The debtor's opposition is overruled. The motion is granted. The bankruptcy case is converted to one under chapter 7. Except as so ordered, the motion is denied.

Turning to the substance of the motion, the United States trustee (the "UST") seeks dismissal or conversion of this case for cause pursuant to 11 U.S.C. § 1112(b). Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) also limits the foregoing directive in several ways:

First, under section 1112(b)(2), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(1), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(3) requires that, absent the UST's consent or compelling circumstances that prevent the court from meeting the requirements of the subsection, the court must commence a hearing on the motion within thirty

(30) days after it is filed and must decide the motion within fifteen (15) days after the hearing is commenced. This motion was filed on January 6, 2014, and the UST set this motion for hearing on February 11, 2014, the first available calendar date for a 28-day motion filed under LBR 9014-1(f)(1). The UST's action in setting the hearing more than thirty days after it was filed constitutes movant's consent to hearing the motion more than thirty days after it was filed. The decision on this matter will take place within fifteen-day days after the hearing is commenced.

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." The court has the discretion to consider cause not specifically listed under § 1112(b). Cause may include unreasonable delay that is prejudicial to creditors. In re Consolidated Pioneer Mortg. Entities, 264 F.3d 803, 808-09 (9th Cir. 2001).

The court finds, for the reasons stated in the motion, that the movant, the United States trustee (the "UST") has established cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(A), (B), (F), (I), and (N). Specifically, the UST has shown that the debtor has failed to make timely post-confirmation quarterly reports as required by the terms of the confirmed plan. The UST has shown that the debtor has materially defaulted under the terms of its confirmed plan by failing to make quarterly payments to the plan administrator since the quarterly payment made on April 30, 2013. The UST has also shown that the debtor has failed to timely pay taxes owed after the date of the order for relief.

The court further finds that the debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. The debtor has failed to establish any of the requirements of section 1112(b)(2)(A) or (B).

The debtor's opposition is not persuasive. The debtor does not dispute the UST's allegations of cause for dismissal, and admits that it is unlikely that it will be unable to complete the plan as confirmed. The debtor requests a 60 to 90 day continuance for the purpose of allowing the debtor and/or its principal to seek out a buyer for the debtor's book of business. However, given the undisputed evidence presented by the UST, a continuance of the motion would expose the debtor to a significant risk of continued diminution of its assets. A chapter 7 trustee will be able to explore options for a sale of the debtor and/or its book of business.

The court finds that conversion, rather than dismissal of the case is in the best interests of the creditors and the estate. As set forth in the motion and the opposition, the debtor's business may have value that can be realized through a sale to an appropriate buyer.

The court will issue a minute order.

5. 08-22725-B-11 HSM-11 BAYER PROTECTIVE SERVICES, INC.

CONTINUED MOTION FOR APPROVAL OF RESIGNATION OF PLAN ADMINISTRATOR
1-28-14 [733]

Tentative Ruling: This motion continued from February 11, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

6. 12-23115-B-11 UST-1 MELANIE CORNELL

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
1-6-14 [280]

Tentative Ruling: This motion continued from February 11, 2014, at the request of the movant, the United States trustee, based on the possibility that the debtor would be retaining new counsel to represent her in the case.. Nothing new related to this matter having been filed since the continuance, and no application for employment of new counsel having been filed, the court reissues its prior tentative ruling.

The written opposition filed on January 28, 2014 (Dkt. 299), is stricken. The motion is granted. The bankruptcy case is converted to one under chapter 7. Except as so ordered, the motion is denied.

The written opposition is stricken because it was prepared, filed and served on behalf of the debtor by J.J. Sandlin, Esq., who is not counsel of record for the debtor in this bankruptcy case. Mr. Sandlin has never applied for authorization to be employed by nor been approved as counsel for the debtor in this case. The debtor is only permitted to employ an attorney who satisfies the requirements of 11 U.S.C. § 327(a). As the debtor has never applied to employ Mr. Sandlin, there is no evidence in the court's records that Mr. Sandlin is qualified to represent the debtor. The debtor's present counsel of record is Mitchell Abdallah, Esq. the court acknowledges that Mr. Abdallah's name appears above the caption on the opposition papers, but Mr. Abdallah has not signed the opposition, the accompanying memorandum of points and authorities or any of the other papers supporting the opposition.

Turning to the substance of the motion, the United States trustee (the "UST") seeks dismissal or conversion of this case for cause pursuant to 11 U.S.C. § 1112(b). Pursuant to 11 U.S.C. § 1112(b)(1), the court shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. Section 1112(b) also limits the foregoing directive in several ways:

First, under section 1112(b)(2), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such

circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(1), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(3) requires that, absent the UST's consent or compelling circumstances that prevent the court from meeting the requirements of the subsection, the court must commence a hearing on the motion within thirty (30) days after it is filed and must decide the motion within fifteen (15) days after the hearing is commenced. This motion was filed on January 6, 2014, and the UST set this motion for hearing on February 11, 2014, the first available calendar date for a 28-day motion filed under LBR 9014-1(f)(1). The UST's action in setting the hearing more than thirty days after it was filed constitutes movant's consent to hearing the motion more than thirty days after it was filed. The decision on this matter will take place within fifteen-day days after the hearing is commenced.

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." The court has the discretion to consider cause not specifically listed under § 1112(b). Cause may include unreasonable delay that is prejudicial to creditors. In re Consolidated Pioneer Mortg. Entities, 264 F.3d 803, 808-09 (9th Cir. 2001).

The court finds, for the reasons stated in the motion, that the UST has established cause for dismissal or conversion.

As the UST points out in the motion, as of the date of the hearing on this motion this chapter 11 case will have been pending for 725 days — nearly two years. In that time, the debtor has filed one proposed plan

and disclosure statement, on July 27, 2012 (Dkt. 45, 46), 564 days before the date of the hearing on this motion. A hearing on approval of the disclosure statement and a hearing on approval of confirmation of the plan was set for October 30, 2012, but the plan and disclosure statement were deemed withdrawn by the court after the hearing on October 30, 2012, at which neither the debtor nor her counsel of record made an appearance. Since then, the debtor has not filed an amended plan or disclosure statement.

In addition, on April 5, 2013, U.S. Bank, N.A. obtain relief from the automatic stay to foreclose on real property where in the debtor resides located at 23629 Faegerlie Road, Auburn, California and to obtain possession of the real property in accordance with applicable nonbankruptcy law. The debtor filed an appeal of the court's order granting relief from the automatic stay in the District Court. However, the court's review of its own records and the District Court's records shows that the debtor has not prosecuted the appeal; the last filing in the District Court regarding the appeal is a Notice of Incomplete or Delayed Record filed on May 24, 2013, which shows that the debtor did not file a reporter's transcript and/or a notice regarding the transcript. There is no evidence in the court's records that the debtor has taken any action to complete the record of the matter on appeal or to prosecute the appeal in any fashion. The court finds that the debtor's failure to prosecute her chapter 11 case by moving the case toward confirmation of a chapter 11 plan and her failure to prosecute the appeal of the order granting U.S. Bank, N.A. relief from the automatic stay constitutes an unreasonable delay that is prejudicial to creditors and cause to convert or dismiss the case.

The court also finds that the UST has established cause to convert or dismiss the case pursuant to 11 U.S.C. § 1112(b)(4)(F). As set forth in the motion, the debtor was required to file her monthly operating report for the month of November, 2013, on or before December 16, 2013, allowing for the automatic extension of time afforded by Fed. R. Bankr. P. 9006. The debtor did not file the November, 2013, monthly operating report until January 3, 2014 (Dkt. 276). The court finds that the debtor's late filing of the monthly operating report constitutes an unexcused failure to satisfy the reporting requirement for the purposes of § 1112(b)(4)(F) and cause to convert or dismiss the bankruptcy case.

The court further finds that the debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. The debtor has failed to establish any of the requirements of section 1112(b)(2)(A) or (B).

The court finds that conversion, rather than dismissal of the case is in the best interests of the creditors and the estate. The debtor's Statement of Financial Affairs in this case (Dkt. 15 at 21) indicates that she has claims against U.S. Bank, N.A. Although those claims are not scheduled this property of the estate on Schedule B, based on the fact that the debtor has listed lawsuits against her lenders and/or their agents on her Statement of Financial Affairs and the fact that her own opposition mentions potential litigation against U.S. Bank, N.A. regarding the validity of a deed of trust (Dkt. 15 at 21), the court finds that it would be appropriate in this circumstance for a chapter 7 trustee to investigate whether the claims are an administrable asset.

The court will issue a minute order.

7. 13-34976-B-11 CORINNE HUTTLINGER
TMP-2

MOTION TO USE CASH COLLATERAL, MOTION FOR ADEQUATE PROTECTION AND/OR MOTION TO SCHEDULE A FINAL HEARING
2-7-14 [33]

Tentative Ruling: The opposition filed by Bank of America, N.A. is overruled. The motion is dismissed in part and granted in part. As to the debtor's request for authorization to use cash collateral consisting of the rents from real property located at 7129 4th Avenue, Tahoma, California (the "4th Avenue Property") and 131 Shoshone Court, Danville, California (the "Danville Property"), the motion is dismissed. As to the debtor's request for authorization to use cash collateral consisting of the rents from real property located at 317 Fir Street, Tahoma, California, (the "Fir Street Property"), the request is granted in part. The debtor is authorized to use, pending further order of the court, the rents from the Fir Street Property to pay expenses related to operation of the First Street Property consistent with the budget for the Fir Street Property filed as Exhibit "1" to the motion (Dkt. 36 at 2), with the exception of payment of the "Management fee" described therein. No cash collateral shall be used for payment of debtor's attorney's fees. In addition, the $859.35 "Fannie Mae" payment listed in the budget shall be applied only to reduce the amount of the creditor's secured claim, as that secured claim may be later determined. Except as so ordered, the motion is denied.

The debtor's requests with respect to the 4th Avenue Property and the Danville Property are dismissed because they are not ripe for adjudication. The debtor herself states in the motion that the deeds of trust for the lenders secured by the properties do not contain an assignment of leases or rents, and no evidence to the contrary is filed with the motion. The debtor asserts that her requests are being made out of an abundance of caution, but the absence of evidence that the lenders secured by the 4th Avenue Property and the Danville Property have a security interest in the rents means that the court lacks jurisdiction over requests for use of cash collateral because the requests lack justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. The party asserting the claim, in this case, the trustee, has the burden of producing evidence to establish that the issues are ripe. McNutt v. General Motors Acceptance Corp. of Indiana, 298 U.S. 178, 189 (1936); see also Signature Properties Intern. Ltd. Partnership v. City of Edmond, 310 F.3d 1258, 1265 (10th Cir. 2002). With no evidence that the rents are cash collateral, no case or controversy exists.

With respect to the debtor's request for authorization to use the rents from the Fir Street Property, the court finds that the request is ripe for adjudication because the Paragraphs F and G of the "1-4 Family Rider" attached to the copy of the deed of trust filed with BofA's opposition (Dkt. 49 at 24-27) gives the holder of the deed of trust an interest in property including leases and rents. The request is therefore granted as

set forth above. The court does not grant the debtor's request to use rents to pay the $500.00 management fee because the debtor has not presented evidence to show why a $500.00 management fee is necessary. Although the budget does not set forth a specific line item amount for "attorney's fees" the court does not grant debtor's request – to the extent she requests it – to pay attorney's fees from the rents for the Fir Street Property. The debtor's inclusion of an attorney's fees provision in the budget appears to be and essentially amounts to an attempt to generate a self-replenishing post-petition retainer for the debtor's bankruptcy counsel. It is only the rare case in which such procedures are approved. See U.S. Trustee v. Knudsen Corp. (In re Knudsen Corp.), 84 B.R. 668, 672-673 (9th Cir. BAP 1988).

In the absence of any showing that the Fir Street Property is depreciating in value, the court finds that BofA will be adequately protected by the approved payments proposed in the budget for the Fir Street Property.

The court will issue a minute order.

8.	13-35405-B-7 TOG-3	MARCIAL CASTELLANOS AND BEATRIZ PALAFOX	MOTION TO COMPEL ABANDONMENT 2-25-14 [20]

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

The motion is dismissed without prejudice.

The motion and its supporting papers were not served on all creditors as required by FRBP 6007(a). While the motion is technically brought under FRBP 6007(b), creditors are entitled to the same notice that they would receive if the motion were brought by the trustee. First Carolina Fin. Corp. v. Trustee of Estate of Caron (In re Caron), 50 B.R. 27 (Bankr. N.D. Ga. 1984); In re Wideman, 84 B.R. 97 (Bankr. W.D. Tex. 1988). In this case, the debtors' proof of service (Dkt. 24) shows only that the United States trustee and the chapter 7 trustee were served with the motion.

The court will issue a minute order.

9.	14-21008-B-7	MAGALY MEDINA	MOTION TO COMPEL ABANDONMENT 2-24-14 [15]

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

The motion is dismissed without prejudice.

The motion and its supporting papers were not served on all creditors as required by FRBP 6007(a). While the motion is technically brought under

FRBP 6007(b), creditors are entitled to the same notice that they would receive if the motion were brought by the trustee. First Carolina Fin. Corp. v. Trustee of Estate of Caron (In re Caron), 50 B.R. 27 (Bankr. N.D. Ga. 1984); In re Wideman, 84 B.R. 97 (Bankr. W.D. Tex. 1988). In this case, the debtor's proof of service (Dkt. 19) shows only that the United States trustee and the chapter 7 trustee were served with the motion.

In addition, the motion is also dismissed because the movant did not use a docket control number for the motion, as required by LBR 9014-1(c). Docket control numbers are essential to the court's ability to organize the docket for the case, to track the progress of matters in the case, and to prepare for calendars such as this one. Failure to comply with the court's local rules is grounds for, inter alia, dismissal of the motion. LBR 1001-1(g).

The court will issue a minute order.

10. 13-33409-B-7 JASON/JANNIE HINKLE — MOTION TO COMPEL ABANDONMENT
RIN-1 — 2-21-14 [20]

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

The motion is continued to March 25, 2014, at 9:32 a.m.

As the real property for which the debtors seek abandonment (the "Property") is of inconsequential value and benefit to the estate due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption set forth in the amended Schedule C filed on February 18, 2014 (Dkt. 19) pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

11. 13-28915-B-7 THOMAS/DANIELLE GRACE — MOTION TO EMPLOY BANKRUPTCY SHORT SALE SOLUTIONS AS BROKER
JB-1 — 2-2-14 [15]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the debtor's request to employ Kristian Peter of Bankruptcy Short Sale Solutions ("Peter") as real estate agent for the trustee to assist the trustee with marketing and short sale of real property located at 1711 Northfield Drive, Yuba City, California is granted on the terms set forth in the motion. Peter's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so

ordered, the motion is denied.

The court finds that Peter is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court will issue a minute order.

12. 13-35316-B-7 WSS-1 — BRUCE/JUDITH SCHNEIDER — CONTINUED MOTION TO COMPEL ABANDONMENT
1-9-14 [13]

Disposition Without Oral Argument: this motion continued from February 11, 2014, to allow the court to review the amended Schedules B and C filed by the debtors on February 11, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtors' interest in the business name Promotions by Schneider (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Property has no value, as they have ascribed a value of $0.00 to the Property on Schedule B. In addition, the debtors have claimed their interest in the Property as entirely exempt on Schedule C. The debtors have shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

13. 11-36317-B-7 HLG-2 — CLIFTON/JUDITH HOFFMAN — MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
2-25-14 [33]

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

14. 11-35325-B-7 MPD-17 — JAMES COXETER — MOTION TO SELL AND/OR MOTION TO PAY A REAL ESTATE COMMISSION, COSTS OF SALE AND LIENS OF RECORD , MOTION TO WAIVE THE FOURTEEN DAY STAY
2-11-14 [975]

WITHDRAWN BY M.P.

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

The motion is removed from the calendar. The chapter 7 trustee withdrew

the motion on February 21, 2014 (Dkt. 980).

15. 14-20128-B-7 TERRY/CYNTHIA MACDONALD — MOTION TO SELL
ACK-1 — 2-4-14 [12]

Tentative Ruling: The motion is dismissed.

The debtors do not have prudential standing to bring this motion. The debtors seek authorization to sell personal property of the bankruptcy estate consisting of a 2007 Sportsmen Trailer, Model 2352 (the "Trailer"). The Trailer is property of the bankruptcy estate in this chapter 7 case. 11 U.S.C. § 363(b)(1) provides that only "[t]he trustee, after notice and a hearing may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1)(emphasis added).

Although the debtors claimed their interest in the equity in the Trailer as exempt on Schedule C, simply claiming the equity as exempt does not result in an abandonment of the property by the bankruptcy estate. Furthermore, in the event that the Trailer is deemed abandoned by the estate, the debtors will not require court authorization to sell the Trailer, as the court can only authorize a sale of property of the estate.

The court will issue a minute order.

16. 13-35936-B-7 JOHN/CHERYL SEGOVIA — CONTINUED MOTION TO COMPEL ABANDONMENT
RAC-1 — 12-30-13 [9]

Disposition Without Oral Argument: This motion continued from January 28, 2014, to allow the deadline for parties in interest to object to the debtors' claims of exemption to expire. The meeting of creditors in this case was successfully concluded on January 29, 2014, and the deadline under Fed. R. Bankr. P. 4003(b) expired on February 28, 2014. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtors' interest in the business name Segovia's Detail Shop, equipment consisting of buffers, vacuum, extractor and miscellaneous tools, merchandise inventory and cash on hand in the amount of $250.00 (collectively the "Property") with an aggregate value of $920.00, as set forth at line 13 of Schedule B (Dkt. 1 at 23), is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors have claimed their interest in the Property as entirely exempt on Schedule C pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). The debtors also allege without dispute that operation of the business by the trustee would be burdensome to the

estate. The debtors have shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

17. 13-32437-B-7 JOSE REYES — MOTION TO AVOID LIEN OF CITIBANK, N.A.
MG-1 — 1-13-14 [17]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of Citibank, N.A., recorded in the official records of Solano County, Document No. 201200123239, is avoided as against the real property located at 1125 Eisenhower Street, Fairfield, California.

The subject real property has a value of $125,000.00 as of the date of the petition. The unavoidable liens total $133,325.54. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

18. 13-20440-B-7 JOHN/GAIL SIMS — CONTINUED MOTION TO SELL
JRR-2 — 1-22-14 [39]

Tentative Ruling: This motion continued from February 25, 2014, to allow the movant, the chapter 7 trustee, to submit additional information demonstrating that the motion was ripe for adjudication. The trustee filed supplemental information in the form of a stipulation between himself and HSBC Bank USA, N.A. (Dkt. 48) on March 4, 2014. The court now issues the following abbreviated tentative ruling.

The motion is granted. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the real property located at 40775 Leeward Road, The Sea Ranch, California (the "Property") in an "as-is," "where-is" condition to Julia Carpenter and Paul Marti for $485,000.00 on the terms and conditions set forth in the motion and the Residential Purchase Agreement and Joint Escrow Instructions filed as Exhibit "A" to the motion. Pursuant to 11 U.S.C. § 330(a), the trustee is authorized to pay The Coastal Real Estate Company ("Coastal") $14,550.00 in real estate commissions related to the approved sale. The trustee is also authorized to pay Kennedy & Associates $14,550.00 in real estate commissions related to the approved sale. This order does not authorize sale of the Property

free and clear of liens and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

Based on the stipulation between the trustee and HSBC Bank USA, N.A. (Dkt. 48), the court is persuaded that this motion is ripe for adjudication.

The sale shall be subject to overbidding on terms approved by the court at the hearing.

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

The court approved the employment of Coastal as realtor for the estate by order entered June 5, 2013 (Dkt. 18). The court finds that the approved commission for Coastal constitutes reasonable compensation for actual, necessary and beneficial services.

The trustee shall submit an order that conforms to the foregoing ruling.

19. 13-22078-B-7 MATTHEW MORGAN
RM-1

MOTION TO HAVE RELIEF FROM STAY MOTION CLASSIFIED AS AN ADVERSARY PROCEEDING
2-24-14 [47]

CASE CLOSED 2/3/14

Tentative Ruling: The motion is denied.

The movant, Rose Magno, requests that the court treat her motion for relief from the automatic stay (the "Motion") which was filed in this case on May 28, 2013 (Dkt. 16) as an adversary proceeding. As the Motion was previously denied by this court by order entered June 21, 2013 (Dkt. 30) (the "Order"), this motion cannot be granted unless the court vacates the Order. Without vacating the Order, the Motion has been resolved, and there is no pending matter to convert.

Because the movant is pro se, the court treats this motion as one seeking relief from the Order pursuant to Fed. R. Bankr. P. 9024, which incorporates Fed. R. Civ. P. 60.

Fed. R. Civ. P. 60(b) sets forth six grounds upon which relief from a final judgment, order or proceeding may be granted. Those grounds include the following:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence, that, with reasonable diligence, could not have been discovered in time to move for a new trial under Fed. R. Civ. P. 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Of the foregoing reasons, the court construes this motion as one asserting mistake or excusable neglect under Rule 60(b)(1), as the movant asserts that when she filed the Motion she thought she was seeking a determination that the debt allegedly owed to her by the debtor was non-dischargeable, in addition to relief from the automatic stay. Because Rule 60(b)(1) applies, the "catch all" provisions of Rule 60(b)(6) does not. See Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp., 791 F.2d 1334, 1338 (9th Cir.1986) ("A motion brought under [Rule] 60(b)(6) must be based on grounds other than those listed in the preceding clauses.").

However, the Motion was not denied due to the relief sought therein. It was denied because the movant gave insufficient notice of the Motion to the debtor, the debtor's bankruptcy attorney and the chapter 7 trustee, as set forth in the court's ruling on the motion (Dkt. 27), and because the movant did not comply with LBR 4001-1(a)(3), as she failed to file a Relief from Stay Summary Sheet with the Motion. Regardless of the specific relief sought in the Motion, nothing in the instant motion for reconsideration persuades the court that the Order, which denied the Motion due to insufficient notice and failure to follow the court's local rules, should be vacated.

It appears to the court that the movant, having been unsuccessful on the Motion and a second subsequent motion for relief from the automatic stay (which was denied due to insufficient service), has realized that in order to continue to pursue the debtor (who received a discharge on June 18, 2013) for the purposes of collecting a pre-petition debt, she must obtain a determination of nondischargeability of the debt, and that the last day to file a request for such a determination was May 28, 2013, the day on which the Motion was filed. It is apparent that the Movant did not understand this requirement when she filed the Motion, which, while it does allege in a conclusory fashion that the movant's claims against the debtor are nondischargeable as one of the grounds for obtaining relief from stay to continue with state court litigation, does not seek a determination of nondischargeability. "Inadvertence, ignorance of the rules or mistakes construing the rules do not usually constitute 'excusable neglect.'" Pioneer Inv. Services Co. V. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 392 (1993)(emphasis added). However, the possibility that such ignorance may form the basis for a Rule 60(b)(1) motion "is by no means foreclosed." Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997). Therefore, as instructed by the Supreme Court in Pioneer, the movant's alleged misunderstanding regarding the nature of relief she was seeking in the Motion and the resultant failure to meet the deadline for seeking a determination of nondischargeability must be subjected to an examination of all relevant circumstances, including (1) the danger of prejudice to the adverse party; (2) the length of any delay and its potential impact on the

proceedings; (3) the reason for the delay; and (4) whether the moving party acted in good faith. Pioneer, 507 U.S. at 395.

In this case, the court finds that the danger of prejudice to the debtor, the length of the delay and its potential impact on the proceedings, and the reason for the delay all weigh against the movant. After the denial of the Motion, the movant filed a second motion for relief from the automatic stay that sought relief similar to that in the first motion. The second motion was denied by order entered August 27, 2013, due to improper service of the motion. The debtor received his discharge on June 18, 2013, and the bankruptcy case was closed on September 13, 2013. 107 days after entry of the order denying the second second motion for relief from the automatic stay, the movant filed a motion to reopen the bankruptcy case on December 12, 2013, which was granted by Order entered December 30, 2013. The movant took no further action, however, and the case was re-closed by the clerk's office on February 3, 2014. On February 20, 2014, the movant filed another motion to reopen the bankruptcy case, which was granted by order entered March 6, 2014, and on February 24, 2014, filed the instant motion. As of the date of the hearing on this motion, 263 days will have passed since entry of the Order and 251 days will have passed since the debtor received his discharge. The movant offers no explanation for the passage of this substantial time before she sought relief from the Order. The court finds that there is no evidence that the movant has acted in bad faith, but that the length of delay, the reason for the delay and the danger of prejudice to the debtor all weigh against granting the relief sought. Accordingly, the motion is denied.

The court will issue a minute order.

20.	13-33274-B-7 DNL-1	ROBERT SMITH AND TAMMY FORMENT	MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY 2-11-14 [19]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee's request to employ Desmond, Nolan, Livaich and Cunningham ("DNLC") as counsel for the chapter 7 trustee and the bankruptcy estate to assist the trustee with the sale of personal property of the estate is granted. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the trustee's request for approval of a $2500.00 flat fee for DNLC's services in this case is approved on a first and final basis in the amount of $2500.00, payable as a chapter 7 administrative expense upon completion of the services for which DNLC is employed. Except as so ordered, the motion is denied.

The court finds that DNLC is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court finds that the approved fees are reasonable compensation for

actual, necessary and beneficial services.

Counsel for the chapter 7 trustee shall submit an order that conforms to the foregoing ruling.

21. 13-31040-B-11 JIMMY ALEXANDER
DSS-3

CONTINUED MOTION TO VALUE COLLATERAL OF JON AND PEGGY SANDERS
8-29-13 [17]

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

This matter is removed from calendar as resolved by stipulation (Dkt. 73), which was approved by the court elsewhere on this calendar.

22. 13-31040-B-11 JIMMY ALEXANDER
DSS-4

CONTINUED MOTION TO VALUE COLLATERAL OF JON AND PEGGY SANDERS
8-29-13 [21]

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

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. $0.00 of Jon and Peggy Sanders (the "Sanders")' claim secured by the third deed of trust on real property located at 20235-20245 West Paoli Lane, Weimar, CA 95713 (the "Property") is a secured claim, and the balance of their claim is an unsecured claim. Nothing in this ruling affects the Sanders' rights under 11 U.S.C. § 1111.

Eunice Durkee ("Ms. Durkee") is the holder of the first deed of trust on the Property. The motion alleges without dispute that the amount secured by Ms. Durkee's first deed of trust is approximately $36,089.92 (Dkt. 21, p.2, lines 14-15). The Sanders are the holders of the second deed of trust on the Property, and have entered into a stipulation (Dkt. 73) whereby the secured portion of their claim secured by the second deed of trust is $217,660.00, with the balance of their claim being unsecured. Thus, the value of the collateral available to the Sanders on their third deed of trust is $0.00.

The court will issue a minute order.

23. 13-31040-B-11 JIMMY ALEXANDER
DSS-7

CONTINUED MOTION TO APPROVE STIPULATION RE: TREATMENT OF CLAIM UNDER DEBTOR'S PROPOSED CHAPTER 11 PLAN OF REORGANIZATION
1-21-14 [108]

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

The motion is dismissed.

The motion is moot. The stipulation (Dkt. 73) which is the subject of this motion was approved elsewhere on this calendar. The debtor already has the relief he seeks through this motion.

The court will issue a minute order.

24. 13-31040-B-11 JIMMY ALEXANDER
DSS-7

MOTION TO APPROVE STIPULATION RE: TREATMENT OF CLAIM UNDER DEBTOR'S PROPOSED CHAPTER 11 PLAN OF REORGANIZATION
2-25-14 [119]

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

25. 11-44145-B-7 LEE/BARBARA JOHNSON
LBG-2

MOTION TO APPROVE LOAN MODIFICATION
1-31-14 [59]

CASE CLOSED 1/25/13

Tentative Ruling: The motion is dismissed.

The motion is dismissed for lack of standing. 11 U.S.C. § 364, entitled "Obtaining Credit," at subsection (c), authorizes "the trustee" to obtain secured credit, subject to certain requirements. The preceding section only permits the trustee, not the debtors, to obtain credit. While the court acknowledges that a chapter 13 trustee and a chapter 13 debtor concurrently hold the right to seek approval under section 364 to obtain secured credit by operation of 11 U.S.C. § 1303, such is not true for a chapter 7 debtor. Here, the debtors lost their ability to obtain secured credit under section 364 upon conversion of their case from chapter 13 to chapter 7 on October 19, 2012 (Dkt. 36). The debtors have cited to no authority supporting the proposition that they, as chapter 7 debtors, have standing to bring this motion. LBR 9014-1(d)(5).

The court will issue a minute order.

26. 13-35246-B-7 JRR-1 — CHELSEA BARNES — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-30-14 [16]

WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The chapter 7 trustee withdrew the objection on February 20, 2014 (Dkt. 25).

27. 13-36049-B-7 CAH-1 — HASAN/SUADA DELIC — CONTINUED MOTION TO COMPEL ABANDONMENT 1-14-14 [12]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the debtors' business name "Delic Auto Transport" (the "Business"), as well as the assets associated with the Business listed on Line 13 of Schedule B (Dkt. 15, p.4) and more fully described in the motion (the "Business Assets"), are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Business and Business Assets, after accounting for all encumbrances and claimed exemptions, have no equity available for distribution to creditors. The court finds that the debtors have satisfied their burden of establishing that the Business and Business Assets are of inconsequential value and benefit to the estate. In re Viet Vu, 245 B.R. 644, 647 (9th Cir. BAP 2000).

The court will issue a minute order.

28. 12-40758-B-7 HLG-3 — JUAN/CISELY HERNANDEZ — CONTINUED MOTION TO AVOID LIEN OF CASABELLA HOMEOWNERS ASSOCIATION 2-11-14 [39]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The debtors seek an order avoiding a judicial lien purportedly held by Casabella Homeowners Association (the "Creditor") to the extent that it impairs a claim of exemption to which they would be entitled in their

real property located at 36365 Cinzia Lane, Winchester, CA 92596 (the "Property"). To avoid a judicial lien pursuant to 11 U.S.C. § 522(f), the debtors must show the following:

> First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994).

Here, the debtors have failed to establish the existence of a judicial lien impairing their claim of exemption in the Property. Although the debtors claim to have attached as Exhibit "C" to their motion (Dkt. 42, p.7) a copy of the abstract of judgment in favor of the Creditor, what is actually attached is proof of recordation of an abstract of judgment in favor of Cach, LLC, which is related to a matter heard on a prior calendar. The debtors have provided no other evidence that the Creditor either holds an abstract of judgment against the debtors or that it was properly recorded. As such, the debtors have failed to establish the requirements set forth in 11 U.S.C. § 522(f) and In re Mohring, and the motion is denied without prejudice.

The court will issue a minute order.

29. 10-26168-B-7 JRR-1 — RENATO/PERLITA CUENCA — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WELLS FARGO BANK, N.A. 2-5-14 [128]

Tentative Ruling: The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the compromise agreement on the terms set forth in the motion (the "Compromise") (Dkt. 128, p.4-5). Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The chapter 7 trustee alleges without dispute that the Compromise is fair and equitable and in the best interests of the estate and its creditors. He asserts that the Compromise will avoid expensive, lengthy litigation where the outcome is uncertain. The court finds that the Compromise is a reasonable exercise of the trustee's business judgment. In re Rake, 363

B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

30. 10-26168-B-7 JRR-2 — RENATO/PERLITA CUENCA — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DEBTORS RE EXEMPTION
2-5-14 [132]

Tentative Ruling: The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the compromise agreement on the terms set forth in the motion (the "Compromise") (Dkt. 132, p.3-4). Except as so ordered, the motion is denied.

The court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The chapter 7 trustee alleges without dispute that the Compromise is fair and equitable and in the best interests of the estate and its creditors. He asserts that the Compromise will avoid expensive, lengthy litigation where the outcome is uncertain. Furthermore, the Compromise will result in a quicker distribution to creditors. The court finds that the Compromise is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

31. 13-24369-B-7
13-2203
FUKUSHIMA V. AMIRI ET AL — NAEEM/WIZMA AMIRI — MOTION TO DISMISS ADVERSARY PROCEEDING
2-3-14 [25]

Tentative Ruling: Creditor George Sommers ("Mr. Sommers")'s opposition is overruled. The motion is granted, and this adversary proceeding is dismissed with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041, incorporating Federal Rule of Civil Procedure 41(a)(2).

Mr. Sommers' opposition is overruled for the reasons set forth in the plaintiff's reply brief filed February 28, 2014 (Dkt. 31).

The court will issue a minute order.

32. 13-33274-B-7 DNL-2 — ROBERT SMITH AND TAMMY FORMENT — MOTION TO SELL 2-11-14 [24]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to sell personal property of the estate consisting of a 1968 Ford Mustang, a 1983 Toyota Corolla, a 2003 Cadillac Escalade, and a 2008 Mercedes Benz C300 (collectively, the "Vehicles"), all listed on Line 25 of Schedule B (Dkt. 27, p.3) and more fully described in the motion, to Robert Smith and Tammy Forment on the terms set forth in the Sale Agreement attached as Exhibit "C" to the motion (Dkt. 27, p.6-10), provided that the court's ruling does not authorize sale of the Vehicles to any other purchaser, does not authorize sale of the Vehicles free and clear of liens, and does not require any lienholder to reconvey or release its interest in the Vehicles unless it has voluntarily agreed to do so. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

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

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

33. 13-35676-B-7 TJW-1 — JUDITH MACDONALD — MOTION TO COMPEL ABANDONMENT 2-18-14 [19]

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

34. 12-27349-B-7 PBW-1 — PARIS WARE — MOTION TO REOPEN CHAPTER 7 BANKRUPTCY CASE 2-3-14 [34]

CASE CLOSED 8/31/12

Tentative Ruling: The motion to reopen the chapter 7 bankruptcy case is denied without prejudice.

The motion is denied without prejudice because the debtor has failed to pay the $245.00 reopening fee required by 28 U.S.C. § 1930. The court acknowledges that the debtor filed an ex parte application to waive the reopening fee on February 3, 2014 (Dkt. 35) (the "Application"). However, for the reasons set forth below, the Application is denied.

Therefore, the motion is denied without prejudice to the filing of a motion which includes payment of the reopening fee.

On April 16, 2012, the debtor commenced the above captioned case by filing a voluntary petition under chapter 7. The debtor filed an application to waive the chapter 7 filing fee on April 16, 2012 (Dkt. 6), which was denied by order entered April 23, 2012 (Dkt. 23) because, at the time, the debtor had failed to file the required schedules for this case. The debtor was ordered to pay the filing fee in installments, which he successfully completed on August 29, 2012. The trustee filed a report of no distribution on May 16, 2012, the debtor was discharged on August 30, 2012, and the case was closed on August 31, 2012 (Dkt. 29).

The court cannot grant the Application in this instance. The court's authority to waive filing and other fees for chapter 7 cases is governed by 28 U.S.C. § 1930, and may be exercised only in accordance with the policies of the Judicial Conference of the United States (the "Judicial Conference"). The Procedures promulgated by the Judicial Conference on August 11, 2005, particularly paragraph II, state that the district court or the bankruptcy court may waive the chapter 7 filing fee for an individual debtor who: (a) has income less than 150% of the U.S. Department of Health and Human Services' Poverty Guidelines for 2013 applicable to a family of the size involved (the "Poverty Guidelines"); and (b) is unable to pay that fee in installments. 28 U.S.C. 1930(f)(2) states "[t]he bankruptcy court may waive for such debtors [individual chapter 7 debtors who meet the income requirements and who cannot pay the filing fee in installments] other fees prescribed under subsections (b) and (c)." The reopening fee is an "other fee" as described in 28 U.S.C. § 1930(f)(2).

The court finds that the debtor satisfies the income requirement of the test promulgated by the Judicial Conference. To start, the court acknowledges that the Application reports an income of $0.00 as a result of the debtor's unemployment benefits being terminated. However, the Judicial Conference procedures make clear at paragraph II that the income to be used for comparison to the Poverty Guidelines is the "Total Combined Monthly Income" as of the date of the bankruptcy filing as reported on Line 16 of Schedule I ("Schedule I Income"). Official Form B 3B (Debtor's Application For Waiver Of the Chapter 7 Filing Fee) specifically requires in Part 1.2. that the debtor state "Average Monthly Net Income" (Line 16 of Schedule I). The Application was submitted on Official Form B 3B. The court is not authorized to grant a fee waiver based on income figures other than Schedule I Income. In other words, the court is obligated to review the Fee Waiver Application based on Schedule I Income. Here, Schedule I Income is $996.00. According to the Application, the debtor has one (1) individual in his household. 150% of the Poverty Guidelines for a household of one is $1,458.75. Thus, the debtor's Schedule I Income is less than 150% of the Poverty Guidelines, and the first prong of the test promulgated by the Judicial Conference is satisfied.

However, the court cannot grant the Application because the debtor has failed to satisfy the second prong of the test (a showing that he cannot pay the filing fee in installments). Here, the debtor was able to fully pay the original filing fee in installments despite a reported Schedule I Income that is less than 150% of the Poverty Guidelines. Therefore, he is not an individual chapter 7 debtor who meets the income requirement and who cannot pay the filing fee in installments. Because the debtor

does not qualify for a waiver of the reopening fee, the motion is denied without prejudice to the filing of a motion which includes payment of the reopening fee.

The court will issue a minute order.

35. 12-21979-B-7 MARISA CISNEROS

CONTINUED MOTION FOR COMPENSATION FOR MATTHEW P. DONAHUE, SPECIAL COUNSEL(S), FEES: $15,333.33, EXPENSES: $1,969.20
1-10-14 [59]

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

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of $15,333.33 in fees and $1,969.20 in costs, for a total of $17,302.53, payable to Matthew P. Donahue ("Mr. Donahue") as a chapter 7 administrative expense from the settlement funds that are received by the estate. Except as so ordered, the motion is denied.

On January 31, 2012, the debtor commenced the above captioned case by filing a voluntary petition under chapter 7. By order entered September 21, 2013 (Dkt. 51), the court authorized the chapter 7 trustee to retain Mr. Donahue as special counsel for the trustee in this case with an effective date of employment of August 6, 2013. The application seeks compensation for services rendered and costs incurred on the basis of a 33.3 percent contingency fee in relation to the prosecution of a personal injury lawsuit on behalf of the estate for the period of August 6, 2013, through and including January 10, 2014. Payment of any fees and costs due is contingent upon successful receipt of the settlement funds by the estate. The court does not approve through this motion $6,500.00 in funds to be reimbursed to the movant because the movant has failed to explain the nature of these funds and how they represent reasonable compensation for necessary services under 11 U.S.C. § 330(a)(1). However, as set forth in the application, the court finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a)(1).

The court will issue a minute order.

36. 12-21979-B-7 MARISA CISNEROS
BHS-4

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ROOSEVELT GIVENS
1-10-14 [54]

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

The motion is granted in part. The trustee is authorized to enter into

and perform in accordance with the Settlement and Compromise Agreement attached as Exhibit "A" to the motion (the "Agreement") (Dkt. 67, p.2-6). The trustee is further authorized to disburse the net proceeds from the Agreement in accordance with the proposed distribution scheme more fully described at Paragraph 4 of the motion (Dkt. 54, p.2), including a $6,500.00 reimbursement to Matthew P. Donahue for an advance he made to the debtor in this case. Pursuant to 11 U.S.C. § 554(a), the estate's interest in the real property located at 1014 Park Terrace Drive, Galt, CA 95632 (the "Property") is deemed abandoned. Except as so ordered, the motion is denied.

Regarding the request for approval of the Agreement, the court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

Here, the trustee alleges without dispute that the Agreement will net approximately $12,466.69 for the estate without the cost, risk, and delay of litigation. The trustee asserts that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Agreement is fair and equitable, and the Agreement is approved.

Regarding the abandonment of the estate's interest in the Property, the trustee alleges without dispute that the Property, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The court finds that the trustee has satisfied his burden of establishing that the Property is of inconsequential value and benefit to the estate. In re Viet Vu, 245 B.R. 644, 647 (9th Cir. BAP 2000).

The reimbursement to Matthew P. Donahue is authorized because it is made from the debtor's exempted portion of the settlement proceeds and not from property of the bankruptcy estate.

The court will issue a minute order.

37. 13-22280-B-7 LOUIS/DORATHY ZALAR
HSM-7

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S), FEES: $11,033.50, EXPENSES: $152.00
2-18-14 [80]

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

38. 14-20493-B-7 DANIEL TRUJILLO
ALF-1

AMENDED MOTION TO DISMISS DUPLICATE CASE
2-17-14 [12]

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

39. 12-40985-B-7 TIFFANY MARTELL
13-2075
WELTY ET AL V. MARTELL

ADV. CASE CLOSED 12/2/13

MOTION TO SHOW CAUSE AND SANCTIONS FOR NON COMPLIANCE TO BDRP
1-23-14 [31]

Tentative Ruling: The motion is denied.

The motion is denied because it suffers from the following defects. First, judgment was entered in this case on November 13, 2013 (Dkt. 26). Judgments are collected by proceedings under Fed. R. Bankr. P. 7069, incorporating Fed. R. Civ. P. 69. Fed. R. Civ. P. 69(a)(1) states in part: "A money judgment is enforced by a writ of execution, unless the court directs otherwise." The court does not direct otherwise.

Second, the plaintiffs have failed to provide proper notice to the defendant. Motions set for hearing in adversary proceedings must comply with the requirements of Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1) requires that motions be set for hearing on at least twenty-eight (28) days' notice. The notice of hearing must state that "opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions." LBR 9014-1(f)(1)(B). In other words, a party against whom a motion is directed in an adversary proceeding must be informed that they have a right to file a written response to the motion. Here, the amended notice of hearing filed January 30, 2014 (Dkt. 35) is insufficient because it does not contain the aforementioned language. Simply informing the defendant that a hearing will take place at a particular date and time in a particular courtroom is insufficient notice.

The court will issue a minute order.

40. 11-36395-B-7 GURJIT JOHL
GMR-2

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S), FEES: $3,943.50, EXPENSES: $191.36
2-7-14 [109]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves on a first and final basis compensation for the bankruptcy estate's accountant, Gabrielson and Company ("G&C"), in the amount of $3,943.50 in fees and $191.36 in costs, for a total of $4,134.86, for services rendered during the period of November 22, 2013, through and including February 6, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On June 30, 2011, the debtor commenced this bankruptcy case by filing a voluntary petition under chapter 7. By order entered December 16, 2013 (Dkt. 100) (the "Order"), the court granted the trustee's request to employ G&C as accountant for the bankruptcy estate. The Order does not specify an effective date of employment, so G&C's employment was effective December 16, 2013. The application for an order authorizing G&C's employment was filed on November 27, 2013 (Dkt. 89). This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving G&C's employment retroactive to November 22, 2013, the first date on which G&C rendered services to the trustee according to the attached billing records. The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988)(extraordinary or exceptional circumstances to justify retroactive employment). In this case, the court grants an effective date of November 22, 2013.

In the absence of an objection from any party in interest, the court finds that, as set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

G&C shall submit an amended form of employment order which is identical to the Order, but which shall in addition specify an effective date of employment of November 22, 2013. Upon entry of the amended employment order, the court will issue a minute order granting the motion as set forth above.

41. 12-38199-B-7 STEVE GREGORY — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2022 CLG-2
GREGORY V. GREGORY — 2-12-14 [66]

Tentative Ruling: The motion is granted in part. Judgment by default will be entered in favor of plaintiff Angelina Gregory (the "Plaintiff"), against defendant Steve E. Gregory (the "Defendant") in the amount of $90,077.00. Said amount shall be deemed non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(5) and (a)(15). The Plaintiff shall take nothing by way of her claim for relief under 11 U.S.C. § 523(a)(6). Additionally, the Plaintiff shall not receive any award for compensatory damages, punitive damages, or attorney's fees and costs. Except as so ordered, the motion is denied.

The facts alleged in the complaint (the "Adversary Complaint") (Dkt. 1) include the following. The Plaintiff and Defendant were married in 1986 and separated on July 1, 2006. The Plaintiff filed for divorce in Napa County Superior Court in August 2007, NSC 26-38896. The Defendant remained in the family residence located in Napa County, California (the "Home"), for the following year. Pursuant to a verbal agreement, the parties allegedly agreed that, among other things, the Defendant would list the Home for sale. However, by the summer of 2008 the Home had not been listed for sale. Shortly thereafter, the Plaintiff gained access to the Home via court order so that she could prepare it for sale. Upon entry, she found the Home "practically uninhabitable" due to significant damage allegedly caused by the Defendant. She later learned that the Defendant had ceased paying the mortgage and allowed the Home to go into foreclosure. Additionally, the Defendant had allegedly taken out a second mortgage on the Home in the amount of $150,000.00, which he retained in its entirety. The Home was eventually lost to a foreclosure sale. The parties' divorce was finalized by decree entered on September 10, 2010 (Dkt. 1, p.5-6). Pursuant to the decree, the Defendant was ordered to pay the Plaintiff $75,000.00, which represents one-half of the amount that the Defendant received from the second mortgage on the Home. Due to non-payment and interest, this amount has grown to $90,077.00.

The court finds that the Plaintiff has in the Adversary Complaint sufficiently pled her claims for relief under 11 U.S.C. §§ 523(a)(5) and (a)(15). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977).

The Plaintiff has in the instant motion waived her right to relief under 11 U.S.C. § 523(a)(6), as well as her claims to compensatory damages, punitive damages, and attorney's fees and costs. As such, the court finds that the Plaintiff shall take nothing by way of those claims.

The court will issue a separate judgment that conforms to the above ruling.