UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 13, 2017 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar:

3, 5,

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON APRIL 10, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 3, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 16-22503-A-7 EMBRY FANTOZZI — MOTION TO COMPEL ABANDONMENT
MOH-2 — 2-27-17 [55]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to order the trustee to release to the debtor a stock portfolio with a value of $381,839, except for $65,315 to be retained by the trustee for the payment of estate claims. The debtor contends that the filed proofs of claim total $43,543.63.

The motion will be denied for several reasons.

First, the motion is not framed as a request for abandonment under 11 U.S.C. § 554. The motion asks that the trustee be ordered to turn over property of the estate to the debtor. In other words, this is a request for injunctive relief. But, the court cannot award injunctive relief on a motion. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(7). Also, the motion cites to no authority permitting such relief outside the prohibition of Rule 7001(7).

Second, whether or not the relief could be granted by a motion, the motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions and to authenticate the exhibits. This violates Local Bankruptcy Rule 9014-1(d)(7), which provides that "[e]very motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4)."

Finally, the motion will be denied because in chapter 7 cases untimely claims are not disallowed. They are merely accorded a lower priority of distribution. See 11 U.S.C. § 726(a)(3). Although the claims bar date expired on October 12, 2016, this case may receive some untimely claims prior to administration. The motion will be denied.

2. 16-26714-A-7 PAULA HUTCHINSON — MOTION TO CONVERT CASE
PGM-1 — 1-20-17 [26]

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of

the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

While the motion contends that the debtor meets the eligibility requirements of section 109(e), there is nothing establishing that the chapter 13 debt limits are met. The motion says nothing about the debtor's noncontingent, liquidated, unsecured debts and noncontingent, liquidated, secured debts.

3. 07-29026-A-7 MARK/PATRICIA BUCEDI — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-6 — 2-14-17 [112]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's attorney, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,173.17 in fees and $326.83 in expenses, for a total of $3,500. This motion covers the period from October 26, 2012 through February 13, 2017. The court approved the movant's employment as the trustee's attorney on November 28, 2012. In performing its services, the movant charged hourly rates of $175, $195, $200, and $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the investigation of a state court litigation asset, (2) negotiating a sale of the estate's interest in the litigation, (3) preparing and filing a motion to sell the estate's interest in the litigation to the debtors, (4) preparing and filing an abandonment motion, (5) preparing and filing an objection to a proof of claim, and (6) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

4. 16-28229-A-7 MARIA DE ALMEIDA — MOTION TO AVOID JUDICIAL LIEN
SLE-1 — 2-9-17 [13]
VS. AMERICAN EXPRESS BANK, F.S.B.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of American Express Bank for the sum of $2,009.74 on May 16, 2012. The abstract of judgment was recorded with Sacramento County on March 28, 2013. That lien attached to the debtor's residential real property in Sacramento, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1)(A).

The subject real property had an approximate value of $129,503 as of the petition date. Dockets 15 & 1. The unavoidable liens totaled $26,668.29 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 15 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of 102,834.71 in Schedule C. Docket 1.

Cal. Civ. Proc. Code § 704.730 provides that:

"*(a) The amount of the homestead exemption is one of the following:*

"*(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).*

"*(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.*

"*(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:*

"*(A) A person 65 years of age or older.*

"*(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.*

"*(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.*"

As the exemption exceeds $100,000, it is being asserted under subsection 704.730(a)(3).

The motion will be denied because the debtor has not established entitlement to her $102,834.71 exemption. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption under section 704.730(a)(3). See Docket 15.

5. 17-20631-A-7 BERNADETTE BROWN — MOTION FOR RELIEF FROM AUTOMATIC STAY
KR-1
GATEWAY ONE LENDING & FINANCE VS. — 2-24-17 [11]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Gateway One Lending & Finance, seeks relief from the automatic stay with respect to a 2013 Dodge Dart. The movant has produced evidence that the vehicle has a value of $11,650 and its secured claim is approximately $13,667.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on March 1, 2017.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

6. 16-25340-A-7 JEFFREY WICK — MOTION TO AVOID JUDICIAL LIEN
JCK-2
VS. SYNCHRONY BANK — 1-27-17 [18]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Synchrony Bank for the sum of $3,946.26 on April 15, 2016. The abstract of judgment was recorded with San Joaquin County on June 20, 2016. That lien attached to the debtor's residential real property in Stockton, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1)(A).

The subject real property had an approximate value of $227,000 as of the petition date. Dockets 20 & 1. The unavoidable liens totaled $186,284 on that same date, consisting of a single mortgage in favor of Wells Fargo Home

Mortgage. Dockets 20 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 70 & 1.

Cal. Civ. Proc. Code § 704.730 provides that:

"*(a) The amount of the homestead exemption is one of the following:*

"*(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).*

"*(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.*

"*(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:*

"*(A) A person 65 years of age or older.*

"*(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.*

"*(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.*"

As the exemption is for $175,000, it being asserted under subsection 704.730(a)(3).

However, the motion will be denied because the debtor has not established entitlement to the $175,000 exemption in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

The supporting declaration offers no evidence to support the exemption. It merely states the legal conclusion that the debtor is "disabled and thus unable to be substantially gainfully employed." Docket 20.

For example, there is no expert opinion based on specialized knowledge opining that the debtor is disabled nor other evidence of a disability such as collection of disability benefits. Moreover, there are no facts in the motion to support a disability conclusion. Dockets 18 & 20. Accordingly, the motion

will be denied.

7.	14-20142-A-7 SSA-3	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION TO APPROVE COMPROMISE 2-10-17 [44]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and the debtor Narvell Henry, on one hand, and Diamond Pet Food Processors of California, L.L.C., Diamond Pet Food Processors of Ripon, L.L.C., and Schell & Kampter, Inc. (dba Diamond Pet Foods) and Diamond Pet Foods affiliated entities and insurers, on the other hand. The settlement resolves a federal employment discrimination action by Mr. Henry against the Diamond Pet Food entities.

Under the terms of the compromise, the Diamond Pet Food entities will pay $90,000 to the estate to fully resolve the action. Mr. Henry consents to the settlement.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The motion will be denied because it does not contain sufficient information for the court to determine whether the settlement is in the best interest of the estate. The motion gives only the gross settlement amount, without telling the court the estate's administrative claims, and especially the attorney's fees and costs in the litigation. The court cannot determine the net benefit of settlement to the unsecured creditors.

The motion also does not establish a reference valuation for employment discrimination claims. It does not even say what damages were sought in the complaint. As such, the court does not know whether the settlement is, for example, 10%, 25%, 50%, or 75% of the value of the claims. The court cannot determine whether the settlement is in the best interest of the creditors and the estate.

The motion will be denied.

8.	14-20142-A-7 SSA-4	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION TO SET BAR DATE 2-10-17 [50]

Tentative Ruling: The motion will be denied.

The trustee requests the court to set a bar date for the debtors' filing of an amended exemption. The motion is made in the context of the estate settling an employment discrimination action, which will generate gross proceeds of $90,000 to the estate.

The trustee's principal argument is that he "will be unable to accurately determine residual monies in the estate for distribution to creditors of this estate, after payment of administrative claims, without this Court setting a definite bar date for Debtors to amend their schedules to finalize their exemptions, so that he can both analyze those claims and to provide for same in his administration of this case and his final report if allowed." Docket 50 at 2.

The Federal Rules of Bankruptcy Procedure are clear that a debtor may amend his schedules at any time before the case is closed. Fed. R. Bankr. P. 1009(a). This includes the debtor's exemptions in Schedule C. The issue the trustee is faced with here — accurately determining monies for distribution to creditors, while the debtor continues to have the opportunity to amend his exemptions — is not unique. It exists in every chapter 7 asset case, regardless of what assets are being administered by the trustee. Notwithstanding this, the Federal Rules of Bankruptcy Procedure still allow debtors to amend their exemptions at any time before closing.

If the court were to set a bar date for exemption amendments pursuant to the trustee's reasoning in this case, it would have to do it in every chapter 7 asset case, making Fed. R. Bankr. P. 1009(a)'s mandate as to Schedule C obsolete. This makes no sense. The motion will be denied.

9. 16-27589-A-7 ROBERT TURNER — MOTION TO DISMISS CASE 2-13-17 [25]
UST-1

Tentative Ruling: The motion will be granted and the case will be dismissed.

The U.S. Trustee moves for dismissal of this case pursuant to 11 U.S.C. § 707(b)(1) and (3)(B).

As the debtor's response to this motion is unsupported by a declaration establishing his factual assertions, the assertions are hearsay and inadmissible. Fed. R. Evid. 802; Local Bankruptcy Rule 9014-1(d)(7).

11 U.S.C. § 707(b)(1) provides for dismissal of a Chapter 7 case upon a finding of "abuse" by an individual debtor with "primarily consumer debts."

11 U.S.C. § 707(b)(3) provides that "*In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider--*

"*(A) whether the debtor filed the petition in bad faith; or*

"*(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.*"

This motion is based on 11 U.S.C. § 707(b)(3)(B).

"*The rule adopted by the overwhelming majority of the courts considering the issue appears to be that a debtor's ability to pay his debts will, standing alone, justify a section 707(b) dismissal. See Cord, 68 B.R. at 7 (debtors who are able to pay their debts neither need nor deserve protection of chapter 7);*

Hudson, 56 B.R. at 419 (substantial abuse occurs whenever debtor has ability to repay substantial portion of his debts under chapter 13); Edwards, 50 B.R. at 937 (ability to pay principal amount of debts in three years is per se substantial abuse). We find this approach fully in keeping with Congress's intent in enacting section 707(b), and accordingly adopt it."

Zolg v. Kelly (In re Kelly), 841 F.2d 908, 914-15 (9th Cir. 1988); see also In re Lamug, 403 B.R. 47, 55 (Bankr. N.D. Cal. 2009) (agreeing with Kelly).

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

The debtor has admitted in the petition that his debts are primarily consumer debts for purposes of 11 U.S.C. § 101(8). The debtor checked the "Yes" box as pertaining to the question "Are your debts primarily consumer debts?" Docket 1 at 6.

The totality of the circumstances of the debtor's financial situation demonstrates abuse.

First, the debtor has the ability to fund a Chapter 13 plan and repay a significant portion of his debts. As of the petition date, according to his pay advices, the debtor's gross monthly income was $13,962.31. After accounting for his $7,355.28 of payroll deductions in Schedule I, the debtor's monthly income is $6,607.03.

Further, the debtor's household expenses are grossly overstated. In Schedule J, the $1,810 in monthly travel expenses for the visitations of his children are actually $1,410 in the means test statement (line 43). In his response, the debtor admits to those expenses being $1,183.33 a month (Docket 37 at 2). This lowers his expenses in Schedule J by $626.67 a month.

At the meeting of creditors, the debtor testified that his $1,900 "rent" expense in Schedule J is not actually for rent, but it is his one-half share of the household expenses. The other one-half comes from his live-in partner.

But, Schedule J contains other household expenses — duplicative of the $1,900 — that should be subsumed under the $1,900 figure. In Schedule J, such expenses include $750 for food and housekeeping supplies, $200 for clothing, laundry and dry cleaning, $30 for home maintenance, repair and upkeep, and $150 for pet care. This lowers his expenses by another $1,130 a month.

The debtor's $220 payments for the repayment of retirement fund loans are also improper. The court will not permit the debtor to be repaying a credit to himself, at the expense of his creditors not receiving repayment on their credit to him. Egebjerg v. Anderson (in re Egebjerg), 574 F.3d 1045, 1050, 1051 (9th Cir. 2009); Ng v. Farmer (In re Ng), 477 B.R. 118, 128 (B.A.P. 9th Cir. 2012). **This lowers his expenses by another $220.**

The debtor's monthly payments of $400 for past-due pre-petition taxes (scheduled $42,871 priority tax claim) and $230 for student loans (scheduled $15,688 student loan claim) are also improper expenses, as the debtor is preferring some creditors over others by repayment. In a chapter 13 plan, the income devoted to these claims now will be used for plan payments that would

encompass treatment of all creditor claims. This lowers the debtor's expenses another $630.

In the aggregate, the debtor's monthly expenses are lower by $2,606.67 ($630 + $220 + $1,130 + $626.67). In other words, in Schedule J, the aggregate monthly expenses are $4,438.33 and not $7,045. This leaves the debtor with a positive net monthly income of $2,168.70 ($6,607.03 - $4,438.33). Over 60 months, the debtor can pay approximately $130,122 into a chapter 13 plan, toward the $171,930 of total scheduled unsecured claims (estimated 67% dividend).

Even if the court were to consider the debtor's pay advice submitted with the response, his gross monthly income under that advice is still $13,305.28, or only $657.03 less than the above-calculated $13,962.31 amount. Docket 42 at 2. His pay, after accounting for the payroll deductions, is $5,950. This still leaves the debtor with a positive net monthly income of $1,511.67 ($5,950 - $4,438.33). Over 60 months, the debtor can pay approximately $90,700 into a chapter 13 plan, toward the $171,930 of total scheduled unsecured claims (estimated 44% dividend).

Second, the petition documents are replete with deficiencies and conflicting information about the debtor's income and expenses. For instance, the debtor under-reported his income in Schedule J and the means test form. His gross monthly income from the pay advices ($13,962.31) is nearly $1,000 more than the $12,994.11 reported in Schedule I and nearly $335 more than the $13,626.27 reported in the means test statement.

Another example is that, while he claims in Schedule J to have a negative monthly net income of $1,406.17, on line 39c of the means test form the debtor reports having a monthly disposable income of $1,506.47 — nearly a $3,000 discrepancy.

A third example is the debtor's travel expenses for the visits from his children. In Schedule J, such expenses are listed as $1,810 a month, whereas in the means test form, line 43, the expenses are $1,410 a month. Even then, the debtor's response to this motion states that the expenses are actually $1,183.33 a month. Docket 37.

Yet another example is the debtor's $1,900 expense item in Schedule J, listed as rent or home ownership expense. But, when asked at the meeting of creditors, the debtor characterized the expense as his "half of all the household" expenses. Docket 29, Ex. 3 at 89-90.

Notwithstanding this, Schedule J contains other household expenses that are duplicative of the $1,900 expense item, such as the $750 for food and housekeeping supplies, $200 for clothing, laundry and dry cleaning, $30 for home maintenance, repair and upkeep, and $150 for pet care. The debtor says nothing about the duplicative expenses in Schedule J.

Finally, despite claiming a household of two persons in the means test form, the debtor has not included the income of his live-in partner and has refused to provide the U.S. Trustee with evidence of such income. The debtor has an affirmative duty to disclose any amount of regular contributions by a household member — friend or unmarried partner — to the household expenses of the debtor in Schedule I (line 11) and in the means test statement (line 4). See also Fed. R. Bankr. P. 9009.

The debtor's response persists at refusing to disclose the contributions from

the debtor's partner. Docket 37.

Given the debtor's ability to repay his creditors, at least in part, given the confusion he has been sowing in disclosing income and expense information in the various bankruptcy petition documents, and given his refusal to provide relevant financial information to the U.S. Trustee, the debtor's financial situation demonstrates abuse and warrants dismissal of the case under section 707(b)(1) and (b)(3)(B). The motion will be granted and the case will be dismissed.

FINAL RULINGS BEGIN HERE

10. 16-22503-A-7 EMBRY FANTOZZI — MOTION TO EMPLOY AND TO APPROVE COMPENSATION OF ACCOUNTANT
DNL-3 — 2-13-17 [42]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval to employ Bachecki, Crom & Co., L.L.P. as accountant for the estate. Bachecki will assist the estate with the preparation of the estate's 2016 tax returns. The proposed compensation is a flat fee of $2,500. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Bachecki is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate, upon the completion of the services outlined above. The compensation will be approved.

11. 14-31211-A-7 ALICE CARLSON — MOTION TO AVOID JUDICIAL LIEN
MOH-2 — 11-21-16 [38]
VS. CITIBANK (SOUTH DAKOTA), N.A.

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the trustee's objection to the confirmation of the plan concedes the merit of the objection. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

The hearing on this motion was continued from February 27 in order to provide parties in interest with sufficient time to object to the debtor's altered exemption in the subject real property. An amended ruling from February 27 follows.

A judgment was entered against the debtor in favor of Citibank for the sum of $17,370.38 on January 27, 2011. The abstract of judgment was recorded with Butte County on March 17, 2011. That lien attached to the debtor's residential real property in Berry Creek, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $187,000 as of the petition date. Dockets 40 & 41. The unavoidable liens totaled $43,071 on that same date, consisting of a mortgage in favor of Ocwen in the amount of $8,483 and another mortgage in favor of Green Tree Servicing in the amount of $34,588. Dockets 40 & 41. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $143,929 in Amended Schedule C. Dockets 45 & 54.

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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

12. 12-28413-A-7 F. RODGERS CORPORATION
ATA-1
DEVCON CONSTRUCTION INCORPORATED VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-17 [1161]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the debtor and the trustee's counsel. Docket 1164.

13. 14-29813-A-7 LISA AHRENS
DNL-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
2-13-17 [144]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $43,969.56 in fees and $467.04 in expenses, for a total of $44,436.60. This motion covers the period from August 15, 2015 through January 6, 2017. The court approved the movant's employment as the trustee's attorney on November 24, 2015. In performing its services, the

movant charged hourly rates of $195, $200, $225, $250, $275, $325, $400, and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) analyzing Golden One Credit Union's under-secured proof of claim, based on a current loan secured by a vehicle,

(2) preparing, filing and prosecuting an objection to the claim,

(3) preparing further briefing on the objection,

(4) preparing, filing and prosecuting a motion for attorney's fees,

(5) preparing for and appearing in this court on multiple hearings,

(6) defending an appeal on the sustaining of the objection before the Bankruptcy Appellate Panel,

(7) preparing appellee briefs,

(8) preparing for and appearing before the appellate court,

(9) negotiating settlement with Golden One over the attorney's fees, and

(10) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

14. 13-23517-A-7 TRACY GATEWAY, LLC — MOTION FOR ADMINISTRATIVE EXPENSES 1-31-17 [257]
ASF-4

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests allowance of payments to the California Franchise Tax Board of post-petition *estimated* estate income tax liability as follows:

- for 2017 in the amount of $800.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall

be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on March 15, 2013. The tax liability in question is being incurred in 2017. As the tax is being incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

15. 15-29120-A-7 DAVID/CLAIRE SCHOOLEY — MOTION TO APPROVE COMPROMISE
SCB-9 — 2-8-17 [43]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtors, resolving the estate's interest in $8,976 of an employment bonus received by Claire Schooley post-petition.

Under the terms of the compromise, the debtors will pay $6,000 to the trustee in full satisfaction of the estate's interest in the bonus.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake and the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

16. 13-25733-A-7 RODNEY/REGINA LARKINS
HCS-2

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
2-13-17 [69]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,943.50 in fees and $107.20 in expenses, for a total of $10,050.70. This motion covers the period from July 22, 2013 through November 16, 2016. The court approved the movant's employment as the trustee's attorney, under the Suntag Law Firm name, on August 15, 2013. After the Suntag Law Firm merged with Herum\Crabtree, the court approved the movant's employment as the trustee's attorney on June 4, 2016. In performing its services, the movant charged hourly rates of $175, $250, $295, $315 and $345.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) assisting the estate with the investigation of a personal injury claim, (3) advising the trustee about exemption amendment and objection issues, (4) preparing and filing a motion to reserve the claim asset upon case closure, (5) preparing and filing a motion to reopen the case, upon settlement of the claim, (6) preparing and filing a motion to approve the settlement, (7) appearing in court on various matters, and (8) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

17. 16-25935-A-7 DOUGLAS/KIM JACOBS
SS-4

MOTION TO RECONVERT CASE TO CHAPTER 13
2-13-17 [88]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance,

Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

18. 16-20945-A-7 DENNIS/MARGARET EDWARDS — MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
MDM-3 — 1-26-17 [61]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the trustee's objection to the confirmation of the plan concedes the merit of the objection. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

The court continued the hearing on this motion from February 27 in order to consider the movant's supplemental declaration in support of the motion. An amended ruling from February 27 follows.

The chapter 7 trustee, Michael McGranahan, has filed first and final motion for approval of compensation. The requested compensation consists of $15,459.54 in fees and $135.94 in expenses, for a total of $15,595.48. The services for the sought compensation were provided from February 19, 2016 through January 25, 2017. The sought compensation represents 56.6 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $244,190.74 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $15,459.54 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $9,709.53 (5% of the next $950,000 (or $194,190.74)). Hence, the requested trustee fees of $15,459.54 do not exceed the cap of section 326(a).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P.

9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) evaluating the debtor's interest in a real property, (4) employing professionals to assist the estate in the administration of assets, (5) communicating with the estate's professionals about various issues, including sale of the real property, (6) reviewing claims, including claims secured by the real property, (7) resolving an interference with the sale by the debtors, (8) reviewing various pleadings and documents prepared by the estate's professionals, (9) addressing tax issues, (10) preparing final report, and (11) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

19. 16-20945-A-7 DENNIS/MARGARET EDWARDS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SSA-4 — 2-1-17 [72]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Steven Altman, P.C., attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,780 in fees and $210.21 in expenses, for a total of $9,990.21. This motion covers the period from June 1, 2016 through March 13, 2017. The court approved the movant's employment as the trustee's attorney on June 13, 2016. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) assisting the estate with the turnover of a real property by the debtors, (3) negotiating with the debtors about the turnover, (4) assisting with the sale of the property, (5) preparing and filing motion to sell, (6) addressing exemption issues upon sale, (7) assisting with the review of claims, and (8) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

20. 16-20945-A-7 DENNIS/MARGARET EDWARDS
SSA-5

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
2-1-17 [66]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Atherton & Associates, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,625 in fees and $0.00 in expenses. This motion covers the period from May 31, 2016 through January 5, 2017. The court approved the movant's employment as the estate's accountant on June 21, 2016. In performing its services, the movant charged an hourly rate of $250.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included analyzing tax issues pertaining to the sale of a real property and preparing tax returns.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

21. 16-24351-A-7 MOHAMMAD MUSHTAQ
SCB-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
2-8-17 [43]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Schneweis-Coe & Bakken, L.L.P., attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,260 and $135.30 in expenses, for a total of $7,395.30. This

motion covers the period from July 12, 2016 through February 1, 2017. The court approved the movant's employment as the trustee's attorney on July 21, 2016. In performing its services, the movant charged hourly rates of $150 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) attending the meeting of creditors, (3) preparing stipulations for extension of the discharge objection deadline, (4) analyzing a sale of a real property by the debtor pre-petition, (5) investigating the debtor's pre-petition expenditures of the sale proceeds, (6) reviewing documents produced by the debtor about his expenditures, (7) researching the recovery of gambling losses, (8) analyzing the debtor's transfers of proceeds to family members and friends, (9) negotiating settlement with the debtor about avoiding some of the transfers, (10) preparing and filing a motion to approve the settlement, and (11) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

22. 16-24261-A-7 C.C. MYERS, INC. MOTION FOR
WHS-1 RELIEF FROM AUTOMATIC STAY
COMMERCIAL FAMILY LIMITED PARTNERSHIP VS. 1-31-17 [363]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Commercial Family Limited Partnership, seeks relief from the automatic stay to proceed in state court with its property tort claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

23. 17-20576-A-7 JAIME GUTIERREZ — ORDER TO SHOW CAUSE 2-13-17 [11]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on February 16, 2017. No prejudice has resulted from the delay.

24. 17-20189-A-7 CAROL WORTHINGTON — MOTION TO AVOID JUDICIAL LIEN
DAA-1
VS. AMERICAN EXPRESS BANK, F.S.B. — 2-2-17 [13]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, American Express Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Managing Agent/Officer." Docket 16 at 2. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

And, while the debtor served AEB's attorney, Michael & Associates, unless the attorney agreed to accept service, service was improper. See Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Finally, if and when the motion is reset for hearing, the debtor should note that the motion does not establish her entitlement to the $175,000 exemption under Cal. Civ. Proc. Code § 704.730(a)(3). Dockets 15 & 17, Schedule C.

25. 16-28299-A-7 ANDREA BLAKE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 1-31-17 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2010 Ford Explorer. The movant has possession of the vehicle. The movant has produced evidence that the vehicle has a value of $10,100 and its secured claim is approximately $17,208.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on February 7, 2017. And, the movant has possession of the vehicle already.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.