

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman
Bankruptcy Judge
Sacramento, California

March 25, 2014 at 9:32 A.M.

PLEASE TAKE NOTE: Matters appearing on this calendar in In re Ku-ring-gai Ridge Vineyards, LLC, No. 14-22155-B-11 (matters 42 and 43) will not be called for hearing before 10:00 a.m.

| | | |
|----|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 1. | <u>13-30690</u> -B-11 WILLIAM PRIOR <u>13-2288</u> JWK-3 PRIOR V. TRI COUNTIES BANK ET AL | CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING 12-27-13 [<u>93</u>] |
|----|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|

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

Due to the complexity and volume of the briefing for this matter, the motion is continued to May 6, 2014, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

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| 2. | <u>13-30690</u> -B-11 WILLIAM PRIOR <u>13-2288</u> NJR-2 PRIOR V. TRI COUNTIES BANK ET AL | CONTINUED AMENDED MOTION FOR SUMMARY JUDGMENT 1-3-14 [<u>107</u>] |
|----|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|

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

Due to the complexity and volume of the briefing for this matter, the motion is continued to May 6, 2014, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

3. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR PARTIAL
[13-2288](#) WFH-2 SUMMARY JUDGMENT
PRIOR V. TRI COUNTIES BANK ET 1-14-14 [[111](#)]
AL

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

Due to the complexity and volume of the briefing for this matter, the motion is continued to May 6, 2014, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

4. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR LIMITED
[13-2288](#) JWK-2 MOTION TO STAY DISCOVERY
PRIOR V. TRI COUNTIES BANK ET 11-20-13 [[48](#)]
AL

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

The motion is continued to May 20, 2014, at 9:32 a.m. The briefing for this matter is closed. The court's order entered November 21, 2013 (Dkt. 54) is modified to stay discovery in this adversary proceeding as to all parties pending the court's resolution of this motion, the Federal Deposit Insurance Corporation's motion to dismiss, Tri Counties Bank's motion for summary judgment, and the plaintiff debtor's motion for summary judgment.

The court will issue a minute order.

5. [13-30690](#)-B-11 WILLIAM PRIOR CONTINUED MOTION FOR PROTECTIVE
[13-2288](#) NJR-1 ORDER
PRIOR V. TRI COUNTIES BANK ET 12-17-13 [[76](#)]
AL

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

The motion is continued to May 20, 2014, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

6. [13-30690](#)-B-11 WILLIAM PRIOR MOTION TO AMEND
[13-2288](#) WFH-1 2-25-14 [[184](#)]
PRIOR V. TRI COUNTIES BANK ET
AL

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

The motion is continued to May 20, 2014, at 9:32 a.m. The briefing for this matter is closed.

The court will issue a minute order.

7. [13-27008](#)-B-11 ALBERTO GONZALEZ MOTION FOR APPROVAL OF
GEM-8 STIPULATION RE: USE OF CASH
COLLATERAL
3-4-14 [[128](#)]

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.

8. [13-33409](#)-B-7 JASON/JANNIE HINKLE CONTINUED MOTION TO COMPEL
RIN-1 ABANDONMENT
2-21-14 [[20](#)]

Tentative Ruling: This motion continued from March 11, 2014. It remains in a preliminary posture pursuant to 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.

9. [13-21613](#)-B-7 MUHAMMAD ADENWALA MOTION TO AVOID LIEN OF SUN
BSJ-2 VALLEY OAKS OWNERS' ASSOCIATION
2-27-14 [[31](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling.

The motion is dismissed without prejudice.

The debtor did not properly serve the motion. This motion to avoid a lien based on delinquent homeowners association assessments is a contested matter pursuant to Fed. R. Bankr. P. 9014. As such, the motion must be served on the party against whom relief is sought consistent with the requirements of Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. In this case, the debtor seeks relief against Sun Valley Oaks Owners' Association ("Sun Valley"), the alleged lienholder. The debtor's proof of service (Dkt. 36) shows that the debtor served Sun Valley "c/o Allied Trustee Services," which, from the accompanying exhibits (Dkt. 33) appears to be a nonjudicial foreclosure trustee effecting a nonjudicial foreclosure of the debtor's real property on behalf of Sun Valley. There is no evidence in the record that Allied Trustee Services is the holder of the lien the debtor wishes to avoid. There is also no evidence in the record that Allied Trustee Services, while it may be Sun Valley's foreclosure trustee and may be authorized to carry out a nonjudicial foreclosure, is a "agent authorized by law to receive service of process" for the purposes of Fed. R. Bankr. P. 7004(b)(3) and this motion.

In addition, the court notes that the debtor's description of the Notice of Default and Election to Sell under Homeowners Association Lien filed as Exhibit "B" to the motion (the "Notice of Default") as an "abstract of judgment" is incorrect. It appears that the debtor may believe that the Notice of Default is the operative document that creates the lien at issue in this case. That is incorrect. Under California law, a lien for a delinquent assessment is created from the time the Association causes to be recorded a notice of delinquent assessment. Cal. Civ. Code § 5675(a). No notice of delinquent assessment is filed with this motion. One of the necessary elements for a motion to avoid a lien pursuant to 11 U.S.C. § 522(f) is the existence of a lien. In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994) (table). The debtor has not shown evidence that a lien encumbers the real property.

The court will issue a minute order.

10. [12-28614](#)-B-7 PETER/VALENTINA PETRENKO MOTION TO INTERVENE
[13-2380](#) BHS-1 2-18-14 [[29](#)]
PETRENKO V. SALLIE MAE ET AL

Tentative Ruling: The motion is granted in part. Pursuant to Fed. R. Civ. P. 24(a)(2), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7024, Educational Credit Management Corporation ("ECMC") is permitted to intervene in this action by joining in the defense of the action as a defendant. To the extent that ECMC requests that it replace defendant American Education Services as a defendant to the adversary proceeding or that AES be dismissed from the adversary proceeding, the motion is denied without prejudice. Except as so ordered, the motion is

denied.

ECMC alleges without dispute that it has an interest in the promissory note evidencing the student loan debt that is the subject of this adversary proceeding for a determination of nondischargeability of a student loan debt pursuant to 11 U.S.C. § 523(a)(8). ECMC alleges without dispute that it is so situated that disposing of the action without allowing ECMC to intervene may as a practical matter impair or impede ECMC's ability to protect its interest. Accordingly, the motion is granted.

ECMC's request to intervene "on behalf of" named defendant AES is denied without prejudice, as ECMC cites no authority supporting the proposition that Rule 24(a)(2) allows an intervening defendant to replace or otherwise effect the dismissal of another named defendant based solely on an allegation by the intervening party that the defendant has no interest in the action.

The court will issue a minute order.

11. [14-20918](#)-B-7 KUM KANG MOTION TO COMPEL ABANDONMENT
MKJ-1 2-22-14 [[10](#)]

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

The motion is continued to April 22, 2014, at 9:32 a.m.

As the personal property for which the debtor seeks 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 Schedule C filed on January 31, 2014 (Dkt. 1 at 15-16) pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

12. [11-35325](#)-B-7 JAMES COXETER MOTION TO SELL, MOTION TO PAY
MPD-18 AND MOTION TO WAIVE FOURTEEN
DAY STAY
2-24-14 [[983](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell the real property located at 23486, 23488 and 23490 Old 44 Drive, Millville, California, Shasta County APNs 060-560-001 (the "Property") in an "as-is" and "where-is" condition to David and Laurelie Hillebert for \$185,000.00. The chapter 7 trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The trustee is authorized

to distribute the proceeds of the sale in the manner described in the motion. Pursuant to 11 U.S.C. § 330(a), the court approves and the chapter 7 trustee is authorized to pay House of Realty ("HOR") a commission equal to six percent (10%) of the sale price of the Property. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of this order granting the motion imposed by Fed. R. Bankr. P. 6004(h) is waived. 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.

HOR's employment as realtor for the estate was approved by order entered June 10, 2013 (Dkt. 839). The court finds that the approved commission for HOR is reasonable compensation for actual, necessary and beneficial services.

The court authorizes the sale of the Property free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary cost of sale, consensual liens and any exemption claimed by the debtor.

The court does not authorize a sale of the Property free and clear of the lien for unpaid property taxes in favor of the Shasta County Tax Collector ("Shasta County"). As the trustee proposes in the motion to pay Shasta County in full, a sale free and clear of Shasta County's lien is unnecessary.

The court will issue a minute order.

13. [12-39826](#)-B-7 ILDEFONSO/ANDREA RUIZ MOTION TO COMPEL ABANDONMENT
FF-3 3-11-14 [[105](#)]

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

14. [13-35833](#)-B-7 TYRONE DAIGLE AND EMMA MOTION TO AVOID LIEN OF
GMW-1 VALLE-DAIGLE AMERICAN EXPRESS CENTURION BANK
2-21-14 [[27](#)]

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 American Express Centurion Bank, recorded in the official records of San Joaquin County, Document No. 2011-078553, is avoided as against the real property located at 2471 Appian Way, Manteca, California.

The subject real property has a value of \$271,000.00 as of the date of the petition. The unavoidable liens total approximately \$415,000.00 the debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$500.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

15. [13-35833](#)-B-7 TYRONE DAIGLE AND EMMA MOTION TO AVOID LIEN OF
GMW-2 VALLE-DAIGLE PERSOLVE, LLC
2-21-14 [[31](#)]

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 Persolve, LLC, recorded in the official records of San Joaquin County, Document No. 2013-124200, is avoided as against the real property located at 2471 Appian Way, Manteca, California.

The subject real property has a value of \$271,000.00 as of the date of the petition. The unavoidable liens total approximately \$415,000.00 the debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$500.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

16. [13-35833](#)-B-7 TYRONE DAIGLE AND EMMA MOTION TO AVOID LIEN OF CACH,
GMW-3 VALLE-DAIGLE LLC
2-21-14 [[35](#)]

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 CACH, LLC, recorded in the official records of San Joaquin County, Document No. 2013-124200, is avoided as against the real property located at 2471 Appian Way, Manteca, California.

The subject real property has a value of \$271,000.00 as of the date of the petition. The unavoidable liens total approximately \$415,000.00 the debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$500.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

17. [09-34235](#)-B-7 SIERRA WEST BUSINESS MOTION TO AMEND
WT-4 PARK, LLC 2-13-14 [[339](#)]

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

The motion is granted. The order entered May 1, 2013 (Dkt. 311) approving the employment of the movant as counsel for the chapter 7 trustee will be amended to state an effective date of employment of January 7, 2013. Except as so ordered, the motion is denied.

In the absence of opposition, the court finds that the movant has established the existence of excusable neglect for the purposes of Fed. R. Civ. P. 60(b)(1), based on the movant's failure to request an effective date of employment in its employment application (the "Application") filed on February 12, 2013. The court notes that the movant does not explain the circumstances underlying the inclusion, by the movant's office, of an effective date of employment of May 2, 2013, in the Order that was submitted to the court for signature following the hearing on the Application. This undercuts the movant's argument that delay in the court's signing of the Order resulted in an effective date of employment almost four months after the movant first began rendering services to the estate. However, considering that the movant filed an initial ex parte application for approval of

employment on January 17, 2013, only 10 days after first rendering services to the estate, granting an effective date of employment of January 17, 2013, is well within the court's usual policy of approving effective dates of employment of up to 30 days before the date on which the request is made without requiring a showing of exceptional circumstances. It is clear from the record in this case that, as the movant points out in the motion, this is not a situation where the movant ignored the requirement that its employment for the estate be approved by the court.

The court will issue a minute order granting the motion. The movant shall submit a proposed amended employment order which is titled as an amended order and which is identical to the Order except that it shall specify an effective date of January 7, 2013.

18. [09-34235](#)-B-7 SIERRA WEST BUSINESS MOTION FOR COMPENSATION BY THE
WT-5 PARK, LLC LAW OFFICE OF WEINTRAUB, TOBIN,
CHEDIAK, COLEMAN, GRODIN FOR
JULIE E. OELSNER, TRUSTEE'S
ATTORNEY(S), FEES: \$68,261.00,
EXPENSES: \$1,979.01
2-13-14 [[344](#)]

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

The motion is granted. Pursuant to the 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves \$28,038.50 in fees and \$190.28 in costs, for a total of \$28,228.78, for services rendered to the estate by the applicant between January 7, 2013, and May 1, 2013. The court also approves \$2845.00 in fees and \$319.03 in costs, for a total of \$3164.03, for services rendered to the estate by the applicant between November 21, 2013, and January 28, 2014. The court approves the foregoing fees plus fees already approved in this case on a final basis in the amount of \$68,261.00 and costs in the amount of \$1979.01, for a total of \$70,240.01 in fees and costs, to be paid as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The court converted this case to one under chapter 7 on May 12, 2012 (Dkt. 238). By order entered May 1, 2013 (Dkt. 311), the court approved the employment of the applicant as counsel for the chapter 7 trustee, with an effective date of employment of May 2, 2013. Elsewhere on this calendar, the court has granted the applicant's motion to amend the order approving employment to specify an effective date of employment of January 7, 2013. The court finds that the approved fees and costs are reasonable compensation for actual, necessary services rendered by the applicant to the estate. 11 U.S.C. § 330(a).

Following the applicant's submission of, and the court's signing of, an amended employment order specifying an effective date of employment of January 7, 2013, (as directed elsewhere on this calendar) the court will issue a minute order granting the motion.

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363, the chapter 7 trustee is authorized to sell the real property located at 23486, 23488 and 23490 Old 44 Drive, Millville, California, Shasta County APNs 060-560-001 (the "Property") in an "as-is" and "where-is" condition to 2500 J Street, Sacramento, California (APN 007-0103-001) to Ken Turton for \$1,725,000.00 on the terms set forth in the Purchase and Sale Agreement filed as Exhibit "D" to the motion (Dkt. 407 at 34-41). The chapter 7 trustee is authorized to sell the Property free and clear of the judgment liens of American Express ("AMEX") and Wells Fargo Bank, N.A. ("WFB") pursuant to 11 U.S.C. § 363(f)(2). The stipulation (the "Stipulation") between the trustee, AMEX and WFB filed with the motion (Dkt. 407) is approved and shall be binding between the parties thereto. The trustee is authorized to distribute the proceeds of the sale in the manner described in the motion. Pursuant to 11 U.S.C. § 330(a), the court approves and the chapter 7 trustee is authorized to pay Cornish and Carey Commercial Newmark Knight Frank ("Cornish and Carey") a commission equal to 4.64% of the sale price of the Property. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of this order granting the motion imposed by Fed. R. Bankr. P. 6004(h) is waived. 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.

Cornish and Carey's employment as realtor for the estate was approved by order entered November 8, 2013 (Dkt. 379). The court finds that the approved commission for Cornish and Carey is reasonable compensation for actual, necessary and beneficial services.

The court authorizes the sale of the Property free and clear of the judgment liens in favor of AMEX and WFB pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of the Stipulation, AMEX and WFB have, inter alia, consent to the sale of the Property free and clear of their liens.

The court will issue a minute order.

20. [13-36144](#)-B-7 MIGUEL/ELIZABETH IZURIETA CONTINUED MOTION TO COMPEL
BLG-1 ABANDONMENT
1-23-14 [[11](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 554(b), the debtors' interest in the machinery, fixtures, equipment and supplies (collectively, the "Property") listed at line 29 of Schedule B (Dkt. 1 at 21) with an aggregate value of \$11,905.00 is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Property has an aggregate value of \$11,905.00 as of the date of the filing of the petition. The debtors have claimed the value of the property as entirely exempt pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) and (6). The Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b).

The court does not grant the debtors' request to deem their interest in the business name "Musical Images" as abandoned by the estate. The balance of the motion is denied because no business (Musical Images or any other) is scheduled as an asset (Dkt. 1 at 19-21). To the contrary, the debtors state under penalty of perjury on Schedule B that they have no interest in any incorporated or unincorporated business (line 13) and that they have no other personal property of any kind not already listed (line 35).

The court will issue a minute order.

21. [11-30846](#)-B-7 VIRGINIA HOWARD MOTION TO COMPROMISE
DLO-4 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FARMER'S
INSURANCE COMPANY AND/OR MOTION
FOR COMPENSATION FOR DENISE
OLRICH, SPECIAL COUNSEL(S),
FEES: \$15,000.00, EXPENSES:
\$0.00
2-25-14 [[38](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 9019, the chapter 7 trustee is authorized to enter into and perform in accordance with a settlement of the debtor's uninsured motorist claim against Farmer's Insurance (the "Agreement") on the terms set forth in the motion (Dkt. 38). Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves \$15,000.00 in fees and \$0.00 in costs, for a total of \$11,368.00, to special counsel for the estate, Max Arnold ("Arnold"), payable from the proceeds of the Agreement. Any remaining proceeds from the Agreement shall be administered for the benefit of the estate.

Except as so ordered, the motion is denied.

Regarding the proposed 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.

The chapter 7 trustee alleges without dispute that the Agreement is fair and equitable. By entering into the Agreement, the trustee settles the debtor's uninsured motorist claim for what she believes to be the maximum possible recovery, while avoiding significant expenses associated with continued litigation. 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 her burden of persuading the court that the proposed Agreement is fair and equitable, and the motion to enter into the Agreement is approved.

By order entered on May 8, 2013 (Dkt. 30), the court authorized the trustee to retain Mr. Arnold as special counsel for the purpose of prosecuting the State Court Case. Mr. Arnold now seeks compensation for services rendered and costs incurred in connection with that litigation, consistent with his contingency fee agreement with the trustee. As set forth in the motion and Mr. Arnold's supplemental declaration (Dkt. 40), the approved fees and costs are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

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| 22. | <u>13-35490</u> -B-7 QUTONI MILIKINI SL-1 | CONTINUED MOTION TO COMPEL ABANDONMENT 2-11-14 [<u>12</u>] |
|-----|------------------------------------------------------------------|------------------------------------------------------------------------------------|

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.

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| 23. | <u>13-36094</u> -B-7 JOHN KLASINSKI BLG-1 | MOTION TO COMPEL ABANDONMENT 2-20-14 [<u>13</u>] |
|-----|------------------------------------------------------------------|-----------------------------------------------------------------------|

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 554(b), the estate's interest in a massage bench, oils, sheets, and pillows, all of which are listed on Line 29 of Schedule B (Dkt. 1, p.18) (the "Assets") are deemed abandoned by the estate. The debtor's request to compel abandonment of the estate's interest in the business name "JK

Therapeutic & Sports Massage" (the "Business") is denied without prejudice. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Assets are of inconsequential value and benefit to the estate because they have been claimed as fully exempt on Schedule C (Dkt. 1, p.20) and have limited to no value to anyone not engaged in the debtor's area of expertise. The court finds that the debtor has satisfied his burden of establishing that the 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 does not deem abandoned the estate's interest in the Business. The debtor states under penalty of perjury on Line 13 of Schedule B (Dkt. 1, p.17) that he has no interest in any incorporated or unincorporated business. The court may only deem property of the estate as abandoned; according to the sworn schedules, there is no property of the estate consisting of the Business. As such, the debtor's request to compel abandonment of the estate's interest in the Business is denied without prejudice.

The court will issue a minute order.

24. [12-36599](#)-B-7 BRANTLEY/ERIN GARRETT MOTION FOR SUMMARY JUDGMENT
[12-2719](#) AMW-3 2-19-14 [[111](#)]
DAILY ET AL V. GARRETT ET AL
RESCHEDULED TO 5/6/14 AT
9:32 AM

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

This matter is continued to May 6, 2014, at 9:32 a.m. pursuant to the order entered March 5, 2014 (Dkt. 129) granting in part defendant Brantley Justin Garrett's motion to continue/reschedule the hearing on this matter.

25. [13-34046](#)-B-7 JASON/SHANNON WONG MOTION TO SELL
BHS-3 3-3-14 [[63](#)]

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.

26. [10-34749](#)-B-7 LESLIE MCGAHA
HSM-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF HEFNER, STARK AND
MAROIS, LLP FOR AARON A. AVERY,
TRUSTEE'S ATTORNEY(S), FEES:
\$10,758.25, EXPENSES: \$85.20
2-25-14 [[52](#)]

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 application is approved on a first and final basis in the amount of \$10,758.25 in fees and \$85.20 expenses, for a total of \$10,843.45, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on June 5, 2013 (Dkt. 26), the court authorized the chapter 7 trustee to retain the applicant as general bankruptcy counsel in this case. The applicant's employment was effective May 2, 2013. The applicant now seeks compensation for services rendered and costs incurred during the period of May 2, 2013, through and including March 25, 2014. The requested fees and costs are approved in full. The court notes that it would ordinarily reduce the applicant's fees because it has stated an intention to charge 1.0 hours for an unnecessary CourtCall appearance on this matter. This matter is being disposed of without oral argument and will therefore not be called at the hearing on March 25, 2014. No telephonic court appearance is required. However, because the applicant has already performed certain services free of charge as a courtesy to the bankruptcy estate, the requested fees are approved in full. As set forth in the application, 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.

27. [09-21751](#)-B-13 KRISTINE BOWEN
[13-2328](#) PGM-2
FEUTZ ET AL V. BOWEN

MOTION TO DISMISS ADVERSARY
PROCEEDING
2-24-14 [[33](#)]

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 defendant withdrew the motion on March 17, 2014 (Dkt. 41).

28. [14-21552](#)-B-7 ANTHONY FARRARE
DMB-1

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
2-24-14 [[9](#)]

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 Capital One Bank (USA), N.A., recorded in the official records of Shasta County, Doc. No. 2012-0044747, is avoided as against the real property located at 28140 Whitmore Road, Millville, CA 96062 (the "Property").

The Property had a value of \$196,625.00 as of the date of the petition. The unavoidable liens total approximately \$219,296.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), 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 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 Property and its fixing is avoided.

The court will issue a minute order.

29. [12-40758](#)-B-7 JUAN/CISELY HERNANDEZ
HLG-4

MOTION TO AVOID LIEN OF
CASABELLA HOMEOWNERS
ASSOCIATION
3-11-14 [[51](#)]

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.

30. [14-20059](#)-B-7 ALFREDO HOLGUIN
PA-1

MOTION TO EMPLOY ESTELA O. PINO
AS ATTORNEY
3-3-14 [[17](#)]

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.

31. [11-44189](#)-B-7 SCOTT BILLUPS MOTION TO COMPEL ABANDONMENT
ULC-2 2-28-14 [[94](#)]

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.

32. [13-33683](#)-B-7 CHARLES/DORIS WITTHAR MOTION TO COMPEL ABANDONMENT
NBC-3 2-25-14 [[37](#)]

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 a 2004 Ford Ranger (VIN 1FTYR44E34PB35072) (the "Vehicle"), is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Vehicle, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The court finds that the debtors have satisfied their burden of establishing that the Vehicle is 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.

33. [13-33683](#)-B-7 CHARLES/DORIS WITTHAR MOTION TO REDEEM PERSONAL
NBC-2 PROPERTY
2-25-14 [[31](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 722, the debtors are authorized to redeem their 2004 Ford Ranger (VIN 1FTYR44E34PB35072) (the "Collateral") from Member's First Credit Union (the "Creditor") for \$5,117.00. Payment of the redemption amount shall be received by the Creditor on or before April 24, 2014. Debtors' counsel's request for additional compensation totaling \$600.00 is denied. Except as so ordered, the motion is denied.

The court finds that the Collateral qualifies as tangible personal property intended primarily for personal, family or household use. The estate's interest in the Collateral was abandoned under 11 U.S.C. § 554(b) elsewhere on today's calendar.

The request for additional compensation is denied because the motion cites no authority for the court to award fees to chapter 7 debtors' counsel for post-petition work.

The court will issue a minute order.

34. [13-26478](#)-B-7 ALFONSO RODRIGUEZ MOTION TO CONVERT CASE TO
TOG-4 CHAPTER 13
2-13-14 [[39](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the case is converted to one under chapter 13 pursuant to 11 U.S.C. § 706(a).

Although the trustee does not oppose conversion of the case, he seeks a stay of conversion so that he and other estate professionals who provided services during the chapter 7 case may first file and have resolved motions for compensation. In other words, the trustee seeks to have all claims for professional compensation liquidated pre-conversion. The trustee has presented no authority for supporting this request. LBR 9014-1(d) (5).

The court will issue a minute order.

35. [11-40578](#)-B-7 JENNE ROSE AND BRIAN MOTION FOR CONTEMPT, MOTION TO
PA-2 SCOTT COMPEL AND/OR MOTION FOR
TURNOVER OF PROPERTY
2-25-14 [[49](#)]

Tentative Ruling: None.

36. [13-34976](#)-B-11 CORINNE HUTTLINGER MOTION TO EMPLOY TORY M.
TMP-1 PANKOPF AS ATTORNEY
1-6-14 [[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.

37. [13-34976](#)-B-11 CORINNE HUTTLINGER MOTION TO VALUE COLLATERAL OF
TMP-3 FANNIE MAE
2-10-14 [[42](#)]

Tentative Ruling: The debtor's motion to value the collateral of Fannie Mae is continued to a final evidentiary hearing on May 9, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before May 2, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before May 2, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of Fannie Mae. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

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| 38. | 12-20174 -B-13 DEBRA LAWSON 13-2111 PGM-1 LAWSON V. LAW OFFICE OF GOLDSMITH & HULL | CONTINUED MOTION FOR SUMMARY JUDGMENT 10-28-13 [38] |
|-----|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|

Tentative Ruling: The motion is dismissed.

The motion was not timely filed. Pursuant to the scheduling order entered on June 5, 2013 (Dkt. 21) (the "Scheduling Order"), the last date to hear motions for summary judgment was October 29, 2013. This motion was not filed under October 28, 2013, and the hearing was initially set for December 17, 2013. The court acknowledges that modifications were made to the Scheduling Order on November 22, 2013 (Dkt. 45), December 13, 2013 (Dkt. 50), and March 10, 2014 (Dkt. 69). However, none of those modifications altered the original date set as the last date to hear summary judgment motion in this adversary proceeding. There is no evidence that the movant ever sought a modification of the Scheduling Order to extend the deadline to hear this motion. As such, the motion is dismissed.

The court will issue a minute order.

39. [11-42866](#)-B-11 DAVID ZACHARY AND
GWK-11 ANNMARIE SNORSKY

MOTION FOR COMPENSATION FOR
GREGG W. KOECHLEIN, DEBTOR'S
ATTORNEY(S), FEES: \$12,450.50,
EXPENSES: \$119.29
2-11-14 [[337](#)]

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 an interim basis in the amount of \$12,450.50 in fees and \$119.29 in expenses, for a total of \$12,569.79, for services rendered during the period of September 1, 2013, through and including January 31, 2014. The total allowed fees and expenses shall be paid, to the extent not previously paid, as a chapter 11 administrative expense. Except as so ordered, the motion is denied.

On September 22, 2011, the debtors filed a chapter 11 petition. By order entered on March 7, 2012 (Dkt. 109) (the "Order"), the court authorized employment of the applicant as counsel for the debtors effective September 22, 2011. Applicant now seeks compensation for services rendered and costs incurred during the period of September 1, 2013, through and including January 31, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a)(1).

The court will issue a minute order.

40. [12-24376](#)-B-7 PAULETTE WEILL
GMR-2

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S), FEES: \$2,145.50,
EXPENSES: \$120.13
2-25-14 [[33](#)]

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 \$2,145.50 in fees and \$120.13 in costs, for a total of \$2,265.63, for services rendered during the period of August 8, 2013, through and including February 24, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On March 6, 2012, the debtor commenced this bankruptcy case by filing a voluntary petition under chapter 7. By order entered August 19, 2013 (Dkt. 30) (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 August 19, 2013. The application for an order authorizing G&C's employment was filed on August 9, 2013 (Dkt. 21). 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 August 8, 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 August 8, 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 August 8, 2013. Upon entry of the amended employment order, the court will issue a minute order granting the motion as set forth above.

41. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION FOR COMPENSATION BY THE
FXR-47 LAW OFFICE OF FOX ROTHSCHILD,
LLP FOR MICHAEL A. SWEET,
CREDITOR COMM. ATY(S), FEES:
\$48,013.00, EXPENSES: \$1,226.82
2-24-14 [[2469](#)]

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.

42. [14-22155](#)-B-11 KU-RING-GAI RIDGE CONTINUED MOTION TO USE CASH
MLG-1 VINEYARDS LLC COLLATERAL
3-4-14 [[7](#)]

Tentative Ruling: This matter will not be called before 10:00 a.m. The court issues no tentative ruling on the merits of the motion.

43. [14-22155](#)-B-11 KU-RING-GAI RIDGE
MLG-3 VINEYARDS LLC

CONTINUED MOTION FOR ORDER
PROHIBITTING UTILITIES FROM
ALTERING, REFUSING OR
DISCONTINUING SERVICES AND/OR
MOTION APPROVING DEBTOR'S
PROPOSED ADEQUATE ASSURANCE OF
PAYMENT
3-4-14 [[15](#)]

Tentative Ruling: This matter will not be called before 10:00 a.m. The court issues no tentative ruling on the merits of the motion.