

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**March 27, 2017 at 10:00 a.m.**

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

**1, 2, 4, 5, 16**

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

March 27, 2017 at 10:00 a.m.

**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 24, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 10, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 17, 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. 10-49228-A-7 MARIO/NITZE JAIMEZ  
DNL-4

MOTION TO  
APPROVE COMPROMISE  
3-6-17 [77]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 trustee requests approval of a settlement agreement between the estate and debtor Mario Jaimez, on one hand, and CEVA Freight L.L.C., on the other, resolving pending labor law litigation against CEVA. The litigation involves another approximately 120 drivers. The movant seeks approval of the settlement also as a sale under 11 U.S.C. § 363(b).

Mr. Jaimez worked as a van driver for CEVA but was improperly classified as an independent contractor rather than an employee. As a result, he was not reimbursed for certain costs and expenses, was deprived of meal breaks, and was denied overtime.

Under the terms of the compromise, CEVA will pay \$248,554 to the estate, resolving the pending litigation. After payment of special counsel's fees and costs of \$85,351.33 and subtracting \$55,178.82 of settlement proceeds attributed to Mr. Jaimez's individual non-estate claims against CEVA (incurred post-petition, on or after October 17, 2011), the remaining \$108,023.85 will be split between the estate and the debtor pursuant to a court-approved stipulation as follows: \$64,814.31 to the estate and \$43,209.54 to the debtors. See Docket 59.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the multi-plaintiff litigation's span of approximately 10 years, given the involvement of testimonial evidence that is 15 years old, given the significant delay expected if the case were to go to trial, and given the inherent costs, risks 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 (9<sup>th</sup> Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

The court will approve the compromise also as a sale, under section 363(b). For the reasons the court is approving the settlement, a sale of the labor law claims is in the best interest of the estate. The motion will be granted.

2. 10-49228-A-7 MARIO/NITZE JAIMEZ MOTION TO  
DNL-5 APPROVE COMPENSATION OF SPECIAL  
COUNSEL  
3-6-17 [82]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee on behalf of his special counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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.

Leonard Carde, L.L.P., & Altshuler Berzon, L.L.P., special counsel for the estate, have filed their first and final motion for approval of compensation. The requested compensation consists of \$82,851.33 in fees and \$2,500 in expenses, for a total of \$85,351.33. The compensation relates to services provided in a labor law litigation against CEVA Freight, L.L.C. The services were provided from January 2013 through the present. The requested compensation is based on a 33.3% contingency fee basis. The movants' employment order was entered on March 11, 2015, with an effective date of January 9, 2013. Docket 60.

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."

LC & AB provided valuable services for the estate, as they litigated labor law claims against CEVA for misclassifying debtor Mario Jaimez as an independent contractor driver. The prosecution of the claims was part of litigation involving another approximately 120 drivers. The claims were eventually settled.

LC & AB's services consisted, without limitation, of: investigating the claims, preparing and filing a complaint, requesting class certification, appealing denial of class certification, communicating with debtor Mario Jaimez, conducting discovery, conducting extensive settlement negotiations, preparing and revising settlement agreement, and preparing in part this motion. The movant has spent over 500 hours litigating the action.

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.

3. 17-21036-A-7 ROSS TYE MOTION TO  
MOH-1 COMPEL ABANDONMENT  
3-13-17 [19]

**Tentative Ruling:** The motion will be denied.

Creditor Carol Kavanaugh moves for abandonment of the estate's interest in a real property in Chico, California (Capshaw Court).

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The motion will be denied. Abandonment is limited to estate assets. The subject property has not been listed by the debtor as an asset of this estate. Docket 13, Schedule A/B. The movant also admits that the property is not an estate asset. The movant has presented a pre-petition state court order in a still pending marital dissolution action involving the movant and the debtor, awarding the property to the movant as her sole and separate property. Docket 21, Ex. A. As such, abandonment is improper.

4. 14-20142-A-7 NARVELL HENRY AND MONICA MOTION TO  
SSA-3 GONZALES HENRY APPROVE COMPROMISE  
2-10-17 [44]

**Tentative Ruling:** The motion will be granted.

The hearing on this motion was continued from March 13 in order for the court to consider additional pleadings in support of the motion and adjudicate the motion in conjunction with the related motion to approve special counsel compensation. An amended ruling from March 13 follows.

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. In addition, the Diamond Pet Food entities will pay the estate counsel's fees and costs, totaling \$64,625 (\$54,050 in fees and \$10,575 in expenses). The \$90,000 settlement proceeds will be sufficient to cover the other administrative expenses and the estimated \$24,460.36 of unsecured claims.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the estate counsel's opening settlement offer of \$170,000, given his acknowledgment that emotional distress damages would have been the only significant source of damages, given the inherent costs, risks, delay and inconvenience of further litigation, and given that the settlement proceeds will pay all unsecured estate claims in full, 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 (9<sup>th</sup> Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

5.	14-20142-A-7 SSA-5	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL 3-3-17 [55]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee on behalf of McCormack & Erlich, L.L.P., this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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.

McCormack & Erlich, L.L.P., special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of \$54,050 in fees and \$10,575 in expenses, for a total of \$64,625. The compensation relates to services provided in a federal employment discrimination action by Mr. Henry against the Diamond Pet Food entities (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).

The services were provided from August 2013 through the present. The court previously approved a 40% contingency fee compensation arrangement for the movant. Dockets 34 & 41. The movants' employment order was entered on April 21, 2015, with an effective date of August 8, 2013. Docket 41.

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."

McCormack provided valuable services for the estate, litigating the employment discrimination claims. Without limitation, it investigated the factual bases of the claims, prepared a complaint, conducted discovery, prepared dispositive motions, attended court hearings, and negotiated settlement of both the claims and its attorney's fees.

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

The requested compensation is reasonable. It will be paid by the Diamond Pet Food defendants. The compensation will not be taxed against the debtors' estate. Given this, the 40% contingency compensation arrangement approved by the court previously was improvident.

Yet, even if the court were to hold the movant to the approved 40% contingency fee compensation arrangement, the fees would still be reasonable. With the requested compensation being paid by the defendants, the total settlement amount would rise to \$154,625 (\$90,000 + \$64,625). The \$54,050 in fees would be actually less than the 40% contingency mark. Such fees would be 34.95% of the total settlement amount ( $(\$54,050 / \$154,625) \times 100$ ).

6. 16-21246-A-7 JOHN VIGOS MOTION TO  
DMW-1 SELL  
1-31-17 [21]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for \$7,500 the estate's interest in 91.53 acres of raw land in Green River, Utah to Andco Farms, Inc. The property has a scheduled value of \$2,100. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The sale is "as is" and "where is," subject to any encumbrances. The trustee does not know of any liens against the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

7. 16-22654-A-7 MARC LIM MOTION TO  
HSM-5 APPROVE COMPROMISE  
2-27-17 [105]

**Tentative Ruling:** The motion will be denied.

The trustee requests approval of a settlement agreement between the estate on one hand and creditors Chick's Produce, Inc., Del-Fresh Produce, Inc., and Sequoia Sales, Inc., on the other, resolving the amounts and treatment of the creditors' Perishable Agricultural Commodities Act claims against the estate and resolving pending litigation pursuant to those claims against the debtor and the debtor's pre-petition business, Lim's Produce. Pre-petition, Lim's Produce was dissolved under California law and its assets and liabilities were transferred to the debtor.

Under the terms of the settlement:

- The settlement binds any other creditor with a claim based on PACA. Creditors with *potential* PACA claims include Fine Line Foods, Inc., Salad Cosmo U.S.A. Corporation, and G.S. Fresh, Inc. Only Salad Cosmo expressly mentions PACA in its proof of claim.
- The creditor-parties to this agreement will secure consent to the agreement only from Salad Cosmo. Unless they successfully oppose this motion, other creditors with potential PACA claims will be bound by the settlement;
- The creditor-parties to this settlement acknowledge that they have had a full and fair opportunity to review the books and records in the trustee's possession of Lim's Produce (including electronic records and computer system), and do not oppose abandonment of such books and records;
- The PACA creditors will receive pro-rata distributions along with general unsecured creditor, but this does not make their claims general unsecured claims;
- The PACA creditors' claims will be reduced by whatever these creditors recover from previously abandoned assets of the estate;
- The trustee has agreed to reduce estate administrative claims by \$5,000, to be applied at his discretion;
- The PACA creditors agree that the assets the trustee is administering are property of the estate and can be administered by him;
- The trustee agrees not to object to the PACA creditors' proofs of claim. The creditor-parties to this agreement have filed proofs of claim 8, 9 and 11; and
- The creditor-parties to this agreement will dismiss the removed and still pending adversary proceeding action against the debtor and Lim's Produce.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1988).

The settlement has many positive attributes, given:

- the creditor-friendly structure of the PACA statute,
- the significant evidentiary burden on the estate in the litigation, to establish that particular assets were not purchased with funds generated from the sale of perishable produce,
- the global resolution of the claims of the creditor-parties to the agreement,
- that general unsecured creditors may receive nothing if the creditor-parties to the agreement prevail in asserting their PACA claims,
- the expected tremendous litigation costs (including costly discovery and forensic accounting) if the litigation were to reach trial, and
- the inherent other costs, other risks, delay and inconvenience of further litigation.



However, the court cannot approve the settlement because it purports to be binding on any other estate creditor with a claim based on PACA.

The court cannot and is not willing to adjudicate in connection with this motion which other creditors may have a claim based on PACA. Nor can the court force such non-party PACA creditors to be bound by the settlement solely by approving it and due to their failure to oppose this motion. While this motion was served on all creditors, only three of those creditors are actual parties to the settlement. Serving the motion on the other creditors cannot make them parties to the settlement.

More, forcing the modification of other non-party creditors' PACA claims – to be treated as general unsecured creditors – requires a determination of the nature of such claims. Perfection and priority issues are also involved with PACA claims. But, determining the validity, priority or extent of a claim requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). This motion is not an adversary proceeding.

And, if the PACA claims of other creditors are not treated as general unsecured claims, such PACA claims are likely to have priority over the PACA claims of the named creditor-parties to this settlement and the general unsecured claims. A partial settlement of the PACA claims against the estate would not be in the best interest of the creditors and the estate.

8.	16-22654-A-7    MARC LIM HSM-7	MOTION TO EMPLOY AND APPROVE COMPENSATION FOR AUCTIONEER 2-27-17 [112]
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**Tentative Ruling:**    The motion will be denied without prejudice.

The trustee seeks to employ West Auctions, Inc. to sell several personal property items for the benefit of the estate at an Internet and in-person auctions, including a 2007 Lamborghini vehicle, a 1917 Marmon vintage vehicle, a 2006 International truck vehicle, a forklift, and three pallet jacks.

The trustee also seeks approval of the sale. The proposed sale is "as is," "where is" and without representations or warranties.

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 will deny the West employment request because the motion does not establish the reasonableness for the requested compensation.

The proposed compensation arrangement for West is a 12% commission of the gross sale proceeds, along with reimbursement of reasonable expenses up to \$9,500, incurred in preparing the property for sale, encompassing transportation, storage and vehicle document preparation expenses. In addition, West will have the discretion to charge buyers paying with a credit card a 13% buyer's premium and buyers paying in cash or its equivalent a 10% buyer's premium.

However, the motion does not explain why a commission of up to 25% is reasonable compensation for West. The motion does not say what will trigger

the requirement for a buyer's premium either. Although the premium will be paid directly by the buyer, it increases the purchase price from the buyer's perspective, which in turn decreases the proceeds to the estate.

Next, 11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The court will deny the request to approve the sale because the motion does not say whether and to what extent the items to be sold are encumbered. The court did not find a discussion on the property's encumbrances. The estimated sales figures are "gross sales proceeds." As a result, the court cannot tell whether the proposed sale is in the best interest of the estate.

9. 16-22654-A-7      MARC LIM      MOTION TO  
HSM-8      SELL  
3-6-17 [119]

**Tentative Ruling:**      The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" the estate's interest in three vehicles to the debtor for a total of \$6,500. The sale is subject to any encumbrances. All transaction costs will be paid by the debtor. The vehicles include:

- A 2007 Infinity G35 vehicle with a scheduled value of \$9,283 and subject to an exemption in the amount of \$3,050. The debtor claims that the vehicle belongs to his son. The debtor has title to the vehicle only for insurance purposes. The purchase price is \$4,500.

- A 2005 GMC cargo van with a scheduled value of \$2,250 and subject to an exemption in the amount of \$0.00. The vehicle belonged to the debtor's business Lim's Produce. Pre-petition, Lim's Produce was dissolved under California law and all its assets and liabilities were transferred to the debtor. The purchase price is \$1,500.

- A 2002 Honda Accord vehicle with a scheduled value of \$2,252 and subject to an exemption in the amount of \$0.00. The debtor claims that the vehicle belongs to his other son. The debtor has title to the vehicle only for insurance purposes. Also, under a marital settlement agreement, this vehicle was awarded to the debtor's former spouse. The purchase price is \$500.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. The proposed purchase prices are reasonable, given the evidence of equitable interest in the vehicles by someone other than the debtor. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will also waive the 14-day period of Rule 6004(h).

10. 16-22654-A-7      MARC LIM      MOTION TO  
HSM-9      SELL  
3-6-17 [122]

**Tentative Ruling:**      The motion will be granted.

The chapter 7 trustee requests authority to sell as is, where is and with no warranties for \$72,000 the estate's interest in a real property in Elk Grove, California to the debtor. The estate's interest in the property is the non-exempt equity. The property has a scheduled value of \$476,347, it has a single mortgage in the amount of \$313,349.01, and it is subject to an exemption claim in the amount of \$100,000.

The sale is subject to any encumbrances against the property. All transaction costs, such as taxes, charges and fees, will be paid by the debtor.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate substantial proceeds for distribution to creditors of the estate. The trustee believes that the property has a value of between \$500,000 and \$535,000. Assuming 8% in sales costs (\$42,800 on a purchase price of \$535,000), the proposed purchase price for the non-exempt equity is reasonable.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

11. 16-22654-A-7 MARC LIM STATUS CONFERENCE  
16-2087 5-3-16 [1]  
SEQUOIA SALES, INC. V. LIM'S PRODUCE ET AL

**Tentative Ruling:** None.

12. 16-27258-A-7 AUDRA HANTMAN MOTION TO  
RAH-2 AVOID LIEN  
VS.CAPITAL ONE BANK, USA, N.A. 2-27-17 [18]

**Tentative Ruling:** The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, U.S.A., 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 to an officer of the creditor. It was not addressed to anyone.  
Docket 22.

Although an agent for service of process was also served, this does not satisfy Rule 7004(h), which requires service to be addressed solely to the officer of the bank. Docket 22.

And, while the debtor served Capital One's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004);  
Docket 22.

In the event the motion is reset for a hearing, the debtor should note that there is no evidence in the record of a nonpossessory, nonpurchase lien against the furniture, appliances, electronics, clothing and jewelry of the debtor. The claim held by Capital One is involuntary. It is based on a judgment obtained against the debtor. Docket 21. This is not a "security interest" within the meaning of 11 U.S.C. § 522(f)(1)(B). There is no evidence of a judicial lien either. The judgment attached to the motion is unrecorded. The

supporting declaration even speaks of the debtor borrowing money, which is untrue. Docket 20. Without admissible evidence of a nonpossessory, nonpurchase lien or a judicial lien, the motion has no merit.

13. 16-27258-A-7 AUDRA HANTMAN  
RAH-3  
VS.CITIBANK SD, N.A.

MOTION TO  
AVOID LIEN  
2-27-17 [23]

**Tentative Ruling:** The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank, 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 to an officer of the creditor. It was addressed to "Centralized Bankruptcy Dept." Docket 27. This does not satisfy Rule 7004(h).

Although an agent for service of process was also served, this does not satisfy Rule 7004(h) either. The rule requires service to be addressed solely to the officer of the bank. Docket 27.

And, while the debtor served Capital One's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004); Docket 27.

In the event the motion is reset for a hearing, the debtor should note that there is no evidence in the record of a nonpossessory, nonpurchase lien against the furniture, appliances, electronics, clothing and jewelry of the debtor. The claim held by Citibank is involuntary. It is based on a judgment obtained against the debtor. Docket 26. This is not a "security interest" within the meaning of 11 U.S.C. § 522(f)(1)(B).

Nor is there is evidence of a judicial lien on the personal property. The motion contains an abstract of the judgment recorded in Placer County. But, this creates a judicial lien on real property and not personal property. In California, personal property judicial liens are created by the filing of a notice of judgment lien with the California Secretary of State in a manner similar to filing a UCC-1 financing statement. See Cal. Civ. Proc. Code §§ 697.510 & 697.520. The motion contains no evidence of a notice of judgment filed with the Secretary of State. Docket 26. The supporting declaration even speaks of the debtor borrowing money, which is untrue. Docket 25. Without admissible evidence of a nonpossessory, nonpurchase lien or a judicial lien, the motion has no merit.

14. 17-21060-A-7 WILMER SCOTT ESTATE

ORDER TO  
SHOW CAUSE  
3-7-17 [15]

**Tentative Ruling:** The petition will be dismissed.

The debtor did not pay its petition filing fee and did not apply to pay the fee in installments. The filing fee of \$335 was due on February 21, 2017 and has not been paid yet.

**Tentative Ruling:** The petition will be dismissed.

The court issued this order to show cause because the debtor is a corporation and it is not represented by an attorney licensed to practice in the State of California and before this court.

Local District Rule 183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), provides that "A corporation or other entity may appear only by an attorney."

The debtor, a corporation ("Wilmer Scott Corporation"), filed this case without the representation of counsel. Docket 1 at 1. The petition was signed by the debtor's "administrator," Wilmer Scott, who is not identified as an attorney. Docket 1 at 4.

The court also notes that Wilmer Scott is not licensed to practice in California. And, he has not been admitted to practice before the United States Bankruptcy Court for the Eastern District of California. His name does not appear in this court's database of attorneys.

The debtor's lack of representation is cause for dismissal.

Dismissal as opposed to conversion to chapter 7 is in the best interest of the estate, as the debtor's schedules have not been filed and the court has no information indicating that there are assets which could be liquidated for the benefit of the creditors and the estate. The case will be dismissed.

Finally, even if the debtor is a probate or trust estate and not a corporation, the case would still be dismissed as such estates are not eligible to file for bankruptcy. See 11 U.S.C. § 109(a) (prescribing that "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title"); see also 11 U.S.C. § 101(41) (limiting the term "person" to an "individual, partnership, and corporation").

**Tentative Ruling:** The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$211,000 (Docket 23, Schedule A/B) and it is encumbered by claims totaling approximately \$217,172 (excluding \$2,516 in outstanding property taxes). The movant's deed is the only mortgage encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 9, 2017.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession

of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

**FINAL RULINGS BEGIN HERE**

17. 16-27816-A-7 DEMETRA MOORE ORDER TO  
SHOW CAUSE  
2-28-17 [26]

**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 filed Amended Schedules D and E/F on February 14, 2017, but did not pay the \$31 filing fee. However, the debtor paid the fee on March 6, 2017. No prejudice has resulted from the delay.

18. 12-41025-A-7 PATRICK MULLIN MOTION TO  
CWC-12 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
2-24-17 [102]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Carl Collins, counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$18,699.20 in fees and \$400.37 in expenses, for a total of \$19,099.57. This motion covers the period from December 11, 2012 through February 24, 2017. The court approved the movant's employment as the trustee's attorney on December 20, 2012. In performing its services, the movant charged hourly rates of \$90 and \$295.

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 analysis of estate assets, including both real and personal property, (2) investigating the debtor's co-ownership interest in real property, (3) negotiating with co-owner about sale of the real property and reimbursement of his expenses pertaining to the property, (4) preparing and filing stipulation for authority to sell the property under 11 U.S.C. § 363(h), (5) obtaining court approval of the stipulation, (6) working with the title company, a surveyor, co-owner, and adjacent property owners to resolve a defect in the title of the property, (7) preparing and filing a motion to abandon, (8) attending various court hearings, and (9) 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.

19. 12-41025-A-7 PATRICK MULLIN MOTION TO  
CWC-13 APPROVE COMPENSATION OF ACCOUNTANT  
2-24-17 [108]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of \$6,095 in fees and \$0.00 in expenses. This motion covers the period from September 12, 2016 through February 21, 2017. The court approved the movant's employment as the estate's accountant on October 7, 2016. In performing its services, the movant charged hourly rates of \$175 and \$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, without limitation, preparing estate tax returns and discussing tax issues with the trustee.

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

20. 14-24449-A-7 ROBERT/KATHLEEN BRANSON MOTION FOR  
EAT-1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 7-28-15 [71]

**Final Ruling:** This motion has been voluntarily dismissed. Docket 161.

21. 16-22654-A-7 MARC LIM MOTION TO  
HSM-6 ABANDON  
2-27-17 [109]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 an order abandoning the estate's interest in the books, records and office equipment of the debtor's pre-petition retail produce business, Lim's Produce. Pre-petition, Lim's Produce was dissolved under California law and all its assets and liabilities were transferred to the debtor.

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing.

The books and records consist of 42 boxes of documents and a server. The office equipment consists of a server, a router, monitors, keyboards, a printer, mice, cables, power strips, three work stations. Creditors with interest in Lim's Produce records have already reviewed the boxes of documents. The trustee has no use for the books and records or the equipment. He does not believe that any of the equipment can be sold for the benefit of the estate.

Accordingly, the items identified by the motion are of inconsequential value to the estate. The court will order them abandoned to the debtor. The debtor shall have 30 days from entry of the order on this motion to physically retrieve the items from the trustee. If he fails to do so within this time period, the trustee may dispose of the items as he sees fit, including destroying them.

The authority to dispose of the documents does not relieve the trustee from complying with applicable non-bankruptcy law, if any, for such disposal.

22.	16-22163-A-7	SYLVIA KINERSON	OBJECTION TO
	LT-1		CLAIM
	VS. MICK KINERSON		2-18-17 [44]

**Final Ruling:** The objection will be dismissed without prejudice because it was not served on Mick Kinerson, the claimant whose proof of claim is being objected to here. The objection is a contested matter that must be served in the manner provided for service of a summons and complaint, as prescribed by Fed. R. Bankr. P. 7004(b), which requires service on the respondent and not only on his counsel. See Fed. R. Bankr. P. 9014(b). Nothing in Fed. R. Bankr. P. 7004 permits service on the respondent's attorney to the exclusion of the respondent.

While the objecting party served Mick Kinerson's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

23.	16-24867-A-7	EUGENE FEDON AND NANCY	MOTION TO
	HAW-1	BUSCHE-FEDON	COMPEL ABANDONMENT
			2-16-17 [24]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 debtors seek an order compelling the trustee to abandon the estate's interest in all property listed in Schedule A/B, including a real property in Nevada City and numerous personal property items (except \$35,000 used by the debtors to purchase the non-exempt equity in the real property), listed in items 1 through 54 in that schedule.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The trustee has determined that the personal property in items 3 through 54 in Schedule A/B are of inconsequential value to the estate. Docket 28. As such, the court will order the personal property abandoned.

Further, the motion contains evidence that the debtors purchased the entire non-exempt equity in the real property from the estate. The debtors had valued their real property at \$625,000, but the trustee inspected it and determined its value to be higher. With encumbrances against the property totaling \$423,813.21 and a \$175,000 exemption claim (total \$598,813.21), the trustee sold the non-exempt equity in the property to the debtors for \$35,000. The court approved the sale. Dockets 22 & 26. Accordingly, the court will order the real property abandoned as well. The motion will be granted.

24. 17-20268-A-7 PHILIP FRALEY  
GW-1

MOTION TO  
COMPEL ABANDONMENT  
2-24-17 [14]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 debtor requests an order compelling the trustee to abandon the estate's interest in his law office business.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

According to the motion, the business assets include:

- a 2016 BMW M325 vehicle with a value of \$38,400 and subject to a secured claim in the amount of \$47,835;
- the law office business, having a value of \$0.00, given the personal service nature of the business;
- office equipment, furnishings and supplies with a value of \$1,410, subject to an exemption claim in the amount of \$7,900 (Docket 17, Schedule C);
- supplies with a value of \$100, subject to an exemption claim in the amount of \$100 (Docket 17, Schedule C);
- a client trust account with a value of \$0.00, given that all funds in it were unearned as of the petition date (Docket 16 at 2); and
- a leasehold interest in an office premises in Citrus Heights, California, with a value of \$0.00 given that the debtor pays a market rate of \$1,125 a month for the premises; the lease expires in September 2018 (Docket 16 at 2).

Given the items' values, exemptions and encumbrances, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

25.	11-38690-A-7     RAMON/EVA MALDONADO DPR-1 VS. FIRST MUTUAL SALES FINANCE	MOTION TO AVOID JUDICIAL LIEN 2-2-17 [22]
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**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on First Mutual Sales Finance, Inc. by sending it to its agent for service of process, Incorporating Services, Ltd. Docket 27. But, instead of addressing service to the attention of "agent authorized to receive service of process," service was addressed to "Officer Designated to Accept Service for Corporation." The debtor cannot serve the agent for service of process but address service to the attention of the respondent's officer.

In the event the debtor resets the motion, he should note that the January 30, 2017 Amended Schedule C adding an exemption for the subject property was not served on any of the creditors and the trustee, informing them of the added exemption. Docket 20. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1).