

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

June 3, 2014 at 9:32 A.M.

1. [12-28102](#)-B-7 RALPH/SUZANNE EMERSON CONTINUED MOTION TO COMPROMISE
DNL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROBERT K.
STEPHENSON AND/OR MOTION TO
SELL
4-8-14 [[321](#)]

Tentative Ruling: This motion was continued to this calendar by order entered May 15, 2014 (Dkt. 341). It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is granted. Pursuant to Fed. R. Bankr. P. 9019, the Second Amended Sale and Settlement Agreement (the "Agreement") between the chapter 7 trustee, Robert K. Stephenson and Emovations Incorporated is approved. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the Purchased Assets (as that term is defined in the Agreement) in an "as-is" and "where-is" condition to Stephenson for \$10,003.00. The proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to effect the terms of the Agreement. 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.

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

The trustee alleges that the Agreement is fair and equitable and in the best interests of creditors and the estate. Entering into the Agreement spares the estate the expense of potentially expensive and time-consuming litigation in two associated adversary proceedings and potential objections to filed claims. 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).

The court will issue a minute order.

2. [13-30690](#)-B-11 WILLIAM PRIOR MOTION TO EXTEND EXCLUSIVITY
HLC-3 PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT
FILED BY DEBTOR
5-2-14 [[95](#)]

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

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

The court will issue a minute order.

3. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION FOR SUMMARY JUDGMENT
[13-2250](#) LLC HKS-3 AND/OR MOTION FOR SUMMARY
C&S WHOLESALE GROCERS, INC. V. ADJUDICATION
DELANO ET AL 5-1-14 [[137](#)]

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

The motion will be deemed submitted on the papers, which will consist of (1) the motion and supporting papers filed May 1, 2014, (2) the opposition and supporting papers filed May 20, 2014, (3) respondent's response to movant's evidentiary objections to respondent's evidence filed with movant's reply on May 30, 2014, (4) respondent's evidentiary objection to the declaration of Dennis Delano (which declaration was first filed with movant's reply) filed May 30, 2014 and (5) movant's response, if any, to respondent's evidentiary objection filed May 30, 2014. The motion will be deemed submitted on the earlier of (A) movant's filing of a response to respondent's evidentiary objection (Item 5 above), or (B) June 10, 2014. All papers relating to this matter other than those enumerated above are stricken. Except as set forth above, the evidentiary record and briefing for this matter closed upon expiration of the time for the filing of the reply. LBR 9014-1(f)(1)(C) & 1001-1(f).

The court will issue a civil minute order on this ruling and a separate disposition and order on the merits of the motion.

4. [13-30216](#)-B-7 PANKEY & ASSOCIATES, MOTION TO EMPLOY BARRY H.
BHS-1 INC. SPITZER AS ATTORNEY(S) AND/OR
MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S)
5-1-14 [[19](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee's request to employ Barry Spitzer, Esq. ("Spitzer") as counsel for the chapter 7 trustee for the purpose of negotiating with the Internal Revenue Service a carve-out from net proceeds of personal property of the estate, and related matters is granted, effective as of April 2, 2014. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the trustee is authorized to pay Spitzer a flat fee of \$1,500.00 as a chapter 7 administrative expense, payable upon completion of the services for which Spitzer is employed. Except as so ordered, the motion is denied.

Based on Spitzer's statement in his supporting declaration (Dkt. 21) that he has been assisting the trustee since April 2, 2014, the court construes the application as requesting an effective date of employment of April 2, 2014. It is the policy of this department to allow an order approving a professional's employment to state 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 April 2, 2014, is 29 days before the date on which the instant motion was filed.

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

The court finds that the approved flat fee is reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

5. [14-23024](#)-B-7 ROBERT/LAURA TURLINGTON MOTION TO COMPEL ABANDONMENT
CAH-1 4-24-14 [[11](#)]
WITHDRAWN BY M.P.

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

The motion is removed from the calendar. The debtors withdrew the motion on May 16, 2014 (Dkt. 17).

6. [13-24125](#)-B-7 DAVID/BONNIE FRANZONI MOTION TO SELL
DNL-5 5-13-14 [[93](#)]

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 on the merits of the motion.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b)(1), the chapter 7 trustee is authorized to sell the estate's interest in the Residence, the Motor Vehicles and the Liquid Assets (collectively, the "Property"), as those terms are used in the Agreement filed as Exhibit "A" to the motion (Dkt. 95 at 2) in an "as is" and "where is" condition to the debtors for \$125,725.00, without deduction of the debtors' exemption in the Property. The debtors may offset their claimed exemptions in the aggregate amount of \$77,725.00 in the Property against the purchase price, with the balance of \$48,000.00 to be paid to pursuant to the terms of the Agreement. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

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

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

The court will issue a minute order.

7. [13-24125](#)-B-7 DAVID/BONNIE FRANZONI MOTION FOR COMPENSATION FOR
DNL-6 COLDWELL BANKER, BROKER(S)
5-13-14 [[99](#)]

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. [14-22132](#)-B-7 NIINANA KWEKU MOTION FOR DENIAL OF DISCHARGE
UST-1 OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
4-21-14 [[20](#)]

Tentative Ruling: This motion is unopposed. In this instance, because the debtor is pro se, the court issues the following tentative ruling.

The motion is granted. The debtor is denied a discharge in bankruptcy

case no. 14-22132-B-7 pursuant to 11 U.S.C. § 727(a)(8).

The United State trustee alleges without dispute that the debtor was granted a discharge on April 8, 2008, under 11 U.S.C. § 727 in a case commenced in the United States Bankruptcy Court for the Northern District of California on January 11, 2008 (case no. 08-40134). Accordingly, 11 U.S.C. § 727(a)(8) provides that the debtor cannot receive a discharge in this case because the debtor has previously obtained a discharge in her previous case which was commenced within eight years of this case. See 11 U.S.C. § 727(a)(8). Under Fed. R. Bankr. P. 7001(4), an objection to discharge under 11 U.S.C. § 727(a)(8) does not require an adversary proceeding.

The court will issue a minute order.

9. [13-31040](#)-B-11 JIMMY ALEXANDER MOTION TO CONVERT OR TO DISMISS
UST-1 CASE
4-24-14 [[142](#)]

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. By order signed May 30, 2014, the court continued the motion to July 15, 2014, at 9:32 a.m.

10. [12-34345](#)-B-7 ROGER LEASURE MOTION FOR COMPENSATION FOR
SMD-3 GABRIELSON & COMPANY,
ACCOUNTANT(S)
5-2-14 [[94](#)]

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 \$3139.50 in fees and \$177.99 and costs, for a total of \$3317.49 in fees and costs, for the period January 2, 2014, through and including May 1, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on January 13, 2014 (Dkt. 93), the court authorized the chapter 7 trustee to retain the applicant as accountant for the chapter 7 trustee in this case. The order approving the applicant's employment did not specify an effective date of employment, so the effective date of the applicant's employment was the date of the entry of the order, in this case January 13, 2014.

The applicant now seeks compensation for services rendered and costs incurred during the period January 2, 2014, through and including May 1, 2014. 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 the Applicant's employment retroactive to January 2, 2014. 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, January 2, 2014, is only four days before the date of the filing of the employment application on January 6, 2014 (Dkt. 89).

As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The applicant shall submit to the court a proposed form of amended employment order that is identical in substance to the order entered on January 13, 2014 (Dkt. 93), except that it shall also state that the applicant's employment is approved effective as of January 2, 2014. Upon entry of the amended employment order, the court will issue a minute order granting the present application.

11. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION FOR FINAL DECREE
KG-607 4-17-14 [[679](#)]

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

The motion is denied without prejudice.

By this motion the debtors seek entry of a final decree and an order closing the chapter 11 case. The motion, however, is not accompanied by any evidence, in the form of a declaration of the debtors or otherwise, which supports the debtors' allegations regarding payment of claims and taxes or the post-confirmation operation of the debtors' business. LBR 9014-1(d)(6) requires that every motion "shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested."

The court will issue a minute order.

12. [14-24555](#)-B-7 RALPH/KELLY DENNIS MOTION TO DISMISS DUPLICATE
CASE
5-12-14 [[9](#)]

Tentative Ruling: The motion is dismissed without prejudice.

There is no evidence on the court's docket that notice of the motion was

given to all necessary parties. Fed. R. Bankr. P. 2002(a)(4) requires that notice of a hearing on a motion to dismiss a chapter 7 case be given to, inter alia, the debtor, the trustee and all creditors. Section 1.1 of the Region 17 United States trustee Guidelines also require that notice of such a motion be given to the United States trustee. In this case, there is no certificate of service of the motion on the court's docket indicating service on any party. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

13. [14-24957](#)-B-7 DEBRA HARRAKA MOTION TO COMPEL ABANDONMENT
MC-1 5-15-14 [[9](#)]

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

The motion is continued to July 29, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely 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 pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

14. [14-24760](#)-B-7 SHIRLEY KELLER MOTION TO DISMISS CASE
ADS-1 5-12-14 [[9](#)]

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.

15. [12-40213](#)-B-7 THEODORE/MISTY SAMPSON MOTION FOR ENTRY OF JUDGMENT
[14-2075](#) UST-1 AGAINST THEODORE SPENCER
U.S. TRUSTEE V. SAMPSON ET AL SAMPSON PURSUANT TO STIPULATION
AND/OR MOTION TO DISMISS MISTY
DARLENE SAMPSON
4-17-14 [[7](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is granted to the extent set forth herein. The stipulation filed April 17, 2014 (Dkt. 9) (the "Stipulation") is approved. Judgment shall be entered against defendant Theodore Spencer Sampson to the extent set forth in the Stipulation. Consistent with the terms of the Stipulation, the adversary proceeding is dismissed as to defendant Misty Darlene Sampson pursuant to Federal Rule of Bankruptcy Procedure 7041, incorporating Federal Rule of Civil Procedure 41(a)(2). Except as so ordered, the motion is denied.

The court will issue a minute order granting the motion to the foregoing extent. Counsel for the plaintiff shall submit a form of judgment that conforms to the court's ruling and complies with Federal Rule of Bankruptcy Procedure 9021.

16. [09-21417-B-7](#) EDGAR/RHEA BEACH MOTION FOR ENTRY OF DEFAULT
[14-2042](#) DNL-1 JUDGMENT
ACEITUNO V. VELASQUEZ 4-30-14 [[23](#)]

Tentative Ruling: The motion is denied as to the first claim for relief under 11 U.S.C. § 542. The motion is denied without prejudice as to the second claim for relief under 11 U.S.C. § 549 and the third claim for relief under the theory of quiet title.

By this motion, plaintiff Thomas A. Aceituno, the chapter 7 trustee in the parent bankruptcy case (the "Plaintiff") seeks entry of default judgment against defendant John Francisco Velasquez ("Defendant Velasquez"). The facts alleged in the adversary complaint (Dkt. 1) (the "Adversary Complaint") include the following. Debtors Edgar Jackson Beach and Rhea V. Beach (collectively, the "Debtors") filed a voluntary petition under chapter 7 on January 28, 2009. The property of their bankruptcy estate allegedly included real properties located at 4329 Calcutta Way, Sacramento, CA (the "Calcutta Way Property") and 6841 Speckle Way, Sacramento, CA (the "Speckle Way Property"). The bankruptcy case was closed without distribution to creditors on May 29, 2009, and reopened to administer unscheduled assets, specifically the Calcutta Way Property and the Speckle Way Property, on May 1, 2013, with the Plaintiff being appointed as trustee in the case. The Adversary Complaint alleges that several individuals, including Defendant Velasquez, were part of a concerted effort to shield the Calcutta Way Property and Speckle Way Property from administration in the bankruptcy case through a series of pre- and post-petition title transfers. Specifically, the Adversary Complaint states that William Roderick Beach ("W. Beach"), joint debtor Edgar Jackson Beach's father, as an accommodation to the Debtors took bare legal title to the Calcutta Way Property on July 11, 2008. W. Beach later took bare legal title to the Speckle Way Property on October 10, 2008. Then, on December 17, 2008, W. Beach conveyed bare legal title to the Calcutta Way Property to Tanja Kelemen ("T. Kelemen"), the daughter of W. Beach's close friend Marie Kelemen Legalsi. W. Beach also conveyed bare legal title to the Speckle Way Property to T. Kelemen on October 29, 2008. These title transfers occurred pre-petition, and the Debtors allegedly did not disclose their interest in the properties on their schedules. Post-petition, on March 2, 2009, T. Kelemen conveyed legal title to the Speckle Way Property to the Debtors. Again as an accommodation to the Debtors, Defendant Velasquez took bare legal title

to the Speckle Way Property on July 10, 2012. T. Keleman apparently retained legal title to the Calcutta Way Property, and on April 13, 2009, that property was allegedly sold to Daniel Hushman and Kimberly Hushman, with the net proceeds of \$153,000.00 converted to cash and remitted to the Debtors. The Plaintiff seeks turnover of the Speckle Way Property pursuant to 11 U.S.C. § 542, transfer avoidance of the Speckle Way Property based on the July 10, 2012, conveyance of bare legal title to Defendant Velasquez under 11 U.S.C. § 549, and a determination that Defendant Velasquez's legal and equitable interests in the Speckle Way Property be deemed both nominal and inferior to those of the Plaintiff.

The motion as to the first claim for relief, turnover, is denied because the Adversary Complaint does not contain allegations to support either a turnover in kind or a judgment for the value of the Speckle Way Property. Pursuant to 11 U.S.C. § 542, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). The court finds that the allegations set forth in the Adversary Complaint fail to satisfy the foregoing standard in two respects. First, it fails to establish that Defendant Velasquez was in possession of the Speckle Way Property during the Debtors' bankruptcy case. According to the timeline of events set forth in the Adversary Complaint, the Debtors filed for bankruptcy on January 28, 2009, received their discharges on May 18, 2009, and the case was closed on May 29, 2009. The case was not reopened to administer unscheduled assets until May 1, 2013. Defendant Velasquez allegedly took bare legal title to the Speckle Way Property on July 10, 2012, which was after the case was initially closed but before the case was reopened. The Adversary Complaint makes no allegation that Defendant Velasquez was in possession of the Speckle Way Property during the pendency of the Debtors' bankruptcy case. Indeed, subsection (B) of the motion suggests that Defendant Velasquez is not in possession of this property. The Plaintiff cites to no authority which stands for the proposition that 11 U.S.C. § 542(a)'s language "during the case" includes the time between when the bankruptcy case is closed and when it is reopened. Even if he had provided such authority, the Plaintiff's motion would still fail because the Adversary Complaint does not contain any allegation that Defendant Velasquez was in possession of the Speckle Way Property at the time of the commencement of the adversary proceeding, a condition to an order for turnover in kind, or any allegation relating to the valuation of the Speckle Way Property, a condition to obtaining a judgment for the value of the property in lieu of turnover in kind.

The motion as to the second claim for relief, transfer avoidance, is denied without prejudice. Pursuant to 11 U.S.C. § 549, "the trustee may avoid a transfer of property of the estate - (1) that occurs after the commencement of the case; and (2) (A) that is authorized only under section 303(f) or 542() of this title; or (B) that is not authorized under this title or by the court." 11 U.S.C. § 549(a). However, 11 U.S.C. § 549(d) provides a time bar for bringing a transfer avoidance action. Specifically, it states that "an action or proceeding under this section may not be commenced after the earlier of - (1) two years after the date of the transfer sought to be avoided; or (2) the time the case is closed or dismissed." 11 U.S.C. § 549(d). Here, the transfer sought to be avoided allegedly occurred on July 10, 2012. The bankruptcy case

was originally closed on May 29, 2009. The Adversary Complaint was filed on January 29, 2014. Although the Adversary Complaint was filed within two years of the alleged transfer, the relevant date is the earlier date, i.e., the date the case was closed. Although a time bar under a statute of limitation is an affirmative defense by operation of Federal Rule of Bankruptcy Procedure 7008, incorporating Federal Rule of Civil Procedure 8(c)(1), the court may raise this issue *sua sponte*. Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 686-87 (9th Cir. 1993) (explaining that in the absence of waiver, the court may raise the defense of statute of limitations *sua sponte*). Here, the motion fails to provide support for a conclusion that the Adversary Complaint was timely filed.

Finally, the motion as to the third claim for relief, quiet title, is denied without prejudice because the motion fails to provide support, other than a reference to California Code of Civil Procedure § 760.010 (a statute containing definitions), for the assertion that the Plaintiff is entitled to judgment quieting title to the Speckle Way Property.

The court will issue a minute order.

17. [14-21861](#)-B-7 BRYAN/ANDREA KAUFFROATH CONTINUED MOTION TO COMPEL
WRF-1 ABANDONMENT
3-24-14 [[9](#)]

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.

18. [14-22967](#)-B-7 SHERRI KIRK MOTION TO COMPEL ABANDONMENT
RAR-1 5-8-14 [[17](#)]

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

The motion is denied without prejudice.

The motion is denied without prejudice because the debtor has failed to establish that the property which she seeks to compel the trustee to abandon is property of the estate. By this motion, the debtor seeks an order pursuant to 11 U.S.C. § 554(b) compelling the chapter 7 trustee to abandon the estate's interest in the debtor's law practice, which is listed on Line 16 of Schedule B (Dkt. 20, p.3) with a value of \$11,456.00. According to the debtor, her law practice consists of the business name "The Kirk Law Firm," office furniture and supplies valued at \$1,000.00, and an uncollectible account receivable valued at \$10,456.00 (collectively, the "Business Assets"). Confusingly, the debtor specifically states that she is not seeking abandonment of "pending" accounts receivable.

The court may only compel abandonment of property of the estate. It appears to the court that the debtor has lumped all of the Business Assets under the general label "law practice" and incorrectly scheduled

everything on Line 16, which is reserved for accounts receivable. The debtor's sworn schedules do not indicate any interest in the business name "The Kirk Law Firm," which would be properly scheduled on Line 13, or \$1,000.00 in office furniture and supplies related to the business, which would be properly scheduled on Line 29. Although the debtor attempts at paragraphs 3 and 4 of her declaration (Dkt. 19, p.1-2) to explain the value of each of the Business Assets, her explanation is insufficient evidence that they are property of the estate as they are not specifically scheduled on Schedule B. The court cannot infer that unscheduled assets are property of the estate based on the debtor's statements in support of a motion to compel abandonment. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

19. [14-21070](#)-B-7 MELFORD HICKS MOTION TO ABANDON
HSM-2 5-5-14 [[34](#)]

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. § 554(a), the real property located at 8956 Coan Lane, Orangevale, CA 95662 (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that, after accounting for all encumbrances secured by the Property, the Property has no realizable equity for the bankruptcy estate. The trustee further alleges without dispute that the Property is burdensome to the estate due to potential maintenance and insurance costs, potential risks faced by the estate through continued ownership of the Property, and the possible negative tax consequences to the estate from a potential foreclosure by the first deed of trust holder. Based on the foregoing, the court finds that the Property is burdensome to the estate and of inconsequential value and benefit to the estate. 11 U.S.C. § 554(a).

The court will issue a minute order.

20. [14-21070](#)-B-7 MELFORD HICKS MOTION TO EXTEND DEADLINE TO
HSM-3 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-5-14 [[37](#)]

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

The motion is granted. Pursuant to Federal Rule of Bankruptcy Procedure 4004(b)(1), the deadline for the chapter 7 trustee to file an objection to the debtor's discharge under 11 U.S.C. § 727 is extended to July 3, 2014.

The chapter 7 trustee requests an extension of the deadline to file an objection to the debtor's discharge under 11 U.S.C. § 727. When a request for an enlargement of the time to file a complaint objecting to discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge the time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the chapter 7 trustee states that he needs additional time to investigate certain pre-petition transactions which allegedly occurred between the debtor and his parents. Additionally, the trustee requires additional time to review amended Schedules B, C, D, and F which the debtor filed on April 30, 2014. The foregoing constitutes "cause" for purposes of Federal Rule of Bankruptcy Procedure 4004(b)(1).

The court will issue a minute order.

21. [14-21070](#)-B-7 MELFORD HICKS MOTION TO AVOID LIEN OF CAPITAL
SJP-1 ONE BANK, N.A.
4-30-14 [[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 Capital One Bank (USA), N.A., recorded in the official records of Sacramento County, Book No. 20110824, is avoided as against the real property located at 8956 Coan Lane, Orangevale, CA 95662 (the "Property").

The Property had a value of \$308,894.00 as of the date of the petition. The unavoidable liens total approximately \$388,348.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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.

22. [13-22892](#)-B-7 SERGIO ZUCCALA CONTINUED MOTION TO ABANDON
HLG-5 4-25-14 [[82](#)]

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.

23. [14-22494](#)-B-7 JAMES JACOBSON MOTION TO AVOID LIEN OF GRANT
LRR-2 AND WEBER
4-30-14 [[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 Grant & Weber, A Corporation, originally recorded in the official records of Sacramento County, Book No. 20111212, on December 12, 2011, and renewed in the official records of Sacramento County, Book No. 20120615, on June 15, 2012, is avoided as against the real property located at 407 F Street, Galt, CA 95632 (the "Property").

The Property had a value of \$105,000.00 as of the date of the petition. The unavoidable liens total approximately \$88,357.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which he exempted \$16,644.00. 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.

24. [12-20997](#)-B-11 DONALD/ELIZABETH HYATT MOTION TO EMPLOY MIKALAH
MRL-1 RAYMOND LIVIAKIS AS ATTORNEY(S)
AND/OR MOTION TO SUBSTITUTE
ATTORNEY
5-13-14 [[70](#)]

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

25. [12-20997](#)-B-11 DONALD/ELIZABETH HYATT MOTION FOR COMPENSATION BY THE
MRL-2 LAW OFFICE OF LIVIAKIS LAW FIRM
FOR MIKALAH RAYMOND LIVIAKIS,
DEBTORS' ATTORNEY(S)
5-13-14 [[75](#)]

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. [12-20997](#)-B-11 DONALD/ELIZABETH HYATT CONTINUED MOTION TO CONVERT
UST-1 CASE TO CHAPTER 7
4-8-14 [[58](#)]

Tentative Ruling: None.

27. [14-22259](#)-B-7 THERESA JONES TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
4-19-14 [[12](#)]

Tentative Ruling: The debtor's opposition is sustained in part and overruled in part. The chapter 7 trustee's motion to dismiss is granted in part and denied in part. The trustee's request to dismiss the case is denied. The trustee's request to extend the deadline for the trustee to object to the debtor's discharge pursuant to 11 U.S.C. § 727 or to file a motion under Federal Rule of Bankruptcy Procedure 1017(e) to dismiss this case pursuant to 11 U.S.C. § 707(b) is granted, and such deadlines are extended through and including July 6, 2014.

The trustee filed this motion in response to the debtor failing to appear at the continued meeting of creditors held on April 18, 2014. The debtor states in her opposition that, although she failed to appear at the continued meeting of creditors held on April 18, 2014, both she and her attorney appeared at the next continued meeting of creditors held on May 7, 2014. Additionally, the debtor states that she has now provided the trustee with previously requested bank statements and pay stubs, which she claims were not provided sooner because of an error in the mailing address used. The court construes the trustee's motion as a request to dismiss this case pursuant to 11 U.S.C. § 707(a)(1) for cause, including unreasonable delay by the debtor that is prejudicial to creditors. As the moving party, the trustee carries the burden of persuasion. In re Hickman, 384 B.R. 832, 841 (9th Cir. BAP 2008). Here, the debtor has appeared at the continued meeting of creditors and provided the trustee with all previously missing documentation. The meeting of creditors has been concluded, and the trustee has filed a report of no distribution. The trustee has failed to explain what, if any, prejudice the creditors suffered as a result of the debtor failing to appear at the meeting of creditors held on April 18, 2014. The court finds that the trustee has failed to satisfy her burden of proving the existence of cause to dismiss this case under 11 U.S.C. § 707(a). Therefore, the trustee's request to dismiss the case is denied.

The trustee's request for an extension of the deadline to object to the debtor's discharge pursuant to 11 U.S.C. § 727 or to file a motion under Federal Rule of Bankruptcy Procedure 1017(e) to dismiss this case pursuant to 11 U.S.C. § 707(b) is granted. When a request for an enlargement of these deadlines is made before the time has expired, as it was here, the court may enlarge time for cause shown. Fed. R. Bankr. P. 1017(e) and 4004(b). Here, the court finds that the debtor's failure to

appear at the continued meeting of creditors held on April 18, 2014, constitutes sufficient cause for an extension of the aforementioned deadlines through and including July 6, 2014.

The court will issue a minute order.

28. [13-36091](#)-B-7 JAMES/MOLLY ALEXANDER CONTINUED MOTION TO RECONSIDER
LBG-2 5-13-14 [[45](#)]

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

The motion is denied without prejudice.

The motion was not properly served. By this motion the debtors seek reconsideration of the court's order converting their case from chapter 13 to chapter 7, entered on May 1, 2014 (Dkt. 40). A motion for reconsideration of an order converting a case is a request for relief against all creditors, and is therefore a contested matter which must be properly served on all creditors. Fed. R. Bankr. P. 9014; LBR 9014-1(a). Here, the proof of service (Dkt. 48) indicates that the motion, supporting declaration, and notice of hearing were served only on the chapter 13 trustee, the chapter 7 trustee, the debtors, and the Office of the United States Trustee.

If the motion is re-filed, it should address why it should not be denied on its merits. On December 27, 2013, the debtors filed a voluntary petition under chapter 13 (Dkt. 1), as well as an initial chapter 13 plan (Dkt. 5). On February 6, 2014, the chapter 13 trustee filed an objection to confirmation of the initial plan (Dkt. 18), alleging that (1) the plan did not comply with 11 U.S.C. § 1325(a)(4) in that unsecured creditors would receive a higher distribution in a chapter 7 proceeding, and (2) the debtors were delinquent in the amount of \$315.00, or one plan payment. The debtors failed to oppose the objection, and the objection was sustained by order entered March 7, 2014 (Dkt. 23). The debtors failed to take any corrective action thereafter, and on March 19, 2014, the trustee filed a motion to convert the case to one under chapter 7 for unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) (Dkt. 24) (the "Motion"). The debtors again failed to oppose the Motion, and the Motion was granted and the case converted by order entered May 1, 2014 (Dkt. 40). Here, the debtors argue that reconsideration of the court's order converting the case to one under chapter 7 is appropriate because neither they, nor their attorney, received a physical copy of the Motion through the mail. Additionally, they allege that staff illness at their attorney's office caused the office to miss electronic service of the Motion. They further contend that, had they received proper service of the Motion, they would have vigorously opposed it. The court finds the debtors' arguments unpersuasive.

Upon proof that mail is properly addressed, stamped and deposited in the United States Mail, it is presumed to have been received by the addressee in the ordinary course of the mails. Hagner v. United States, 285 U.S. 427, 430, 52 S.Ct. 417, 419, 76 L.Ed. 861, 864 (1932); Hon. Barry Russell, Bankruptcy Evidence Manual § 301.8 (West 2007 - 2008 Ed.). This

presumption, called the "mailbox rule," exists to avoid "swearing contests" between parties regarding service. Schikore v. BankAmerica Supp. Ret. Plan, 269 F.3d 956, 965 (9th Cir. 2001). Once the presumption arises, it "can only be overcome by clear and convincing evidence that the mailing was not, in fact, accomplished." Moody v. Bucknum (In re Bucknum), 951 F.2d 204, 206-07 (9th Cir. 1991). "If a party were permitted to defeat the presumption of receipt of notice resulting from the certificate of mailing by a simple affidavit to the contrary, the scheme of deadlines and bar dates under the Bankruptcy Code would come unraveled. For this reason, an allegation that no notice was received does not, by itself, rebut the presumption of proper notice." In re Ricketts, 80 B.R. 495, 497 (9th Cir. B.A.P. 1987). Here, the proof of service (Dkt. 27) of the Motion, notice of hearing (Dkt. 25), and supporting documents (Dkt. 26) indicates that the debtors, attorney Stephen Johnson ("Mr. Johnson"), and the Office of the United States Trustee were served via U.S. Mail. The debtors were served at "1330 Castle Creek Ranch Rd., Newcastle, CA 95658." Mr. Johnson, who shares the same address with the debtors' attorney Lucas Garcia, was served at "13620 Lincoln Way Ste. 220, Auburn, CA 95603." The proof of service does not indicate any electronic service. According to the court's records, the foregoing are the correct addresses for the debtors and their attorney. The simple argument that they did not receive a physical copy of the Motion, without more, is insufficient to overcome the presumption created by the "mailbox rule."

The court will issue a minute order.