

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

June 17, 2014 at 9:32 A.M.

1. [14-21401](#)-B-7 WILLIAM AUGER CONTINUED MOTION TO COMPEL
HLG-1 ABANDONMENT
4-14-14 [[11](#)]

Tentative Ruling: This matter continued from May 6, 2014. The remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

2. [13-35610](#)-B-7 RODNEY/PATRICIA DEGISCHER MOTION TO APPROVE STIPULATION
[14-2076](#) KB-2 FOR ENTRY OF JUDGMENT
DEGISCHER ET AL V. ASSET 5-13-14 [[27](#)]
ACCEPTANCE, LLC ET AL

Tentative Ruling: The motion is granted to the extent set forth herein. The Stipulation for Entry of Judgment (the "Stipulation") between the plaintiff debtors and defendant El Dorado County Sheriff John D'Agostini (the "Defendant") is approved and binding between the parties thereto. Within ten days after final payment - as that term is defined by Cal. Comm. Code § 4215(a) - of the Defendant's check pursuant to the terms of the Stipulation, the plaintiffs shall submit an order dismissing the adversary proceeding and which order shall state that each party shall bear its own fees and costs. Except as so ordered, the motion is denied.

The court will issue a minute order.

3. [13-35610](#)-B-7 RODNEY/PATRICIA DEGISCHER MOTION FOR ENTRY OF DEFAULT
[14-2076](#) KB-1 JUDGMENT
DEGISCHER ET AL V. ASSET 5-5-14 [[17](#)]
ACCEPTANCE, LLC ET AL

Tentative Ruling: The motion is continued to July 15, 2014, at 9:32 a.m.

The motion is continued to allow for completion of the settlement that is the subject of the plaintiff debtor's motion for approval of a stipulation between the debtors and defendant El Dorado County Sheriff John D'Agostini, which is resolved elsewhere on this calendar.

The court will issue a minute order.

4. [14-20010](#)-B-7 ALI/KELLY AKYUZ MOTION TO CONVERT CASE TO
SJS-1 CHAPTER 13
5-5-14 [[62](#)]

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. § 706(a), the bankruptcy case is converted to one under chapter 13.

The court will issue a minute order.

5. [14-20010](#)-B-7 ALI/KELLY AKYUZ CONTINUED MOTION TO DISMISS
UST-1 CASE
3-24-14 [[38](#)]

Tentative Ruling: The motion is dismissed.

The motion is moot. Elsewhere on this calendar the court has granted the debtors' motion to convert this case to one under Chapter 13.

The court will issue a minute order.

6. [14-22315](#)-B-11 BARRY JOHNSON MOTION TO EMPLOY PAMELA R.
PRE-1 ELLIOTT AS ATTORNEY(S)
6-3-14 [[43](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 327 and Fed. R. Bankr. P. 2014, the debtor-in-possession is authorized to employ the Law Offices of Pamela R. Elliott ("Elliot") as bankruptcy counsel for the debtor-in-possession. Elliot shall treat the \$2,500.00 that she received from former debtor counsel David Silber, Esq. as a one-time retainer of \$2,500.00. Elliott's fees and costs, if any, shall be paid only pursuant to application and, pursuant to the terms of the Retainer Agreement filed as Exhibit "A" to the motion (Dkt. 45 at 4), shall be capped at \$7,500.00 with respect to the services governed by the terms of the Retainer Agreement. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. To the extent that the motion requests approval of the aforementioned \$2,500.00 retainer as a fee earned for pre-petition services performed by Elliott, the motion is denied. Except as so ordered, the motion is denied.

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

To the extent that the motion requests approval of the \$2,500.00 turned over to Elliott by the David Silber Esq., as a fee earned for pre-petition services, the motion is denied. There is no evidence filed with the motion which indicates that Elliott performed any of the "pre-petition analysis, consultation, [or] preparation" referenced in the motion. Rather, the evidence in the court's docket indicates that prior to the date of the filing of the petition the debtor utilized the services of Mr. Silber, not Elliott.

The court will issue a minute order.

7. [13-30216](#)-B-7 PANKEY & ASSOCIATES, MOTION FOR COMPENSATION FOR
DMW-3 INC. NORTHSTATE AUCTIONS,
AUCTIONEER(S)
5-16-14 [[28](#)]

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(a) and Fed. R. Bankr. P. 2016, the application is approved on a final basis in the amount of \$2,406.38 in auctioneer's commissions payable to Northstate Auctions ("Northstate") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On August 1, 2013, the debtor filed a chapter 7 petition. By order entered on March 7, 2014, (the "Order"), the court authorized the trustee to retain Northstate as auctioneer for chapter 7 trustee in this case for the purpose of effecting a sale by auction of personal property of the estate. Northstate now seeks compensation for commissions earned in an amount equivalent to 12% of the gross sale proceeds of the auction. As set forth in the application, the approved commission is reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

8. [14-21320](#)-B-7 JUSTIN/SHAUNA SANDERS MOTION TO AVOID LIEN OF CACH,
GAR-2 LLC
5-21-14 [[19](#)]

Tentative Ruling: Because the debtors' notice of hearing (Dkt. 20) does not state whether written opposition to the motion is required (LBR 9014-1(d)(3)), the court treats the motion as one filed 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.

9. [11-35325](#)-B-7 JAMES COXETER
MPD-19

CONTINUED MOTION TO APPROVE
AGREEMENT WITH DEBTOR
4-22-14 [[996](#)]

Disposition Without Oral Argument: This motion continued from May 20, 2014. The court established a briefing schedule. The movant chapter 7 trustee timely filed supplemental briefing. This motion is unopposed. The court now issues the following tentative ruling.

The motion is granted. The Memorandum Agreement With James Coxeter Regarding Legal Malpractice Action (the "Agreement") filed as Exhibit "A" to the motion (Dkt. 1000) is approved and binding between the parties thereto. The trustee is authorized to execute all documents necessary to effect the Agreement. Distribution or payment of funds resulting from any recovery obtained in connection with the Malpractice Action (as that term is defined in the Agreement) shall be made only pursuant to application. Except as so ordered, the motion is denied.

The court finds, in the absence of opposition and in light of the trustee's supplemental briefing, that entry into the Agreement constitutes a reasonable exercise of the trustee's business judgment for the use of the estate's interest in the Malpractice Action pursuant to 11 U.S.C. § 363(b). See In re Lahijani, 325 B.R. 282, 288-89 (9th Cir. 2005) (position of trustee in connection with sale of property under 11 U.S.C. § 363(b) is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection).

The court will issue a minute order.

10. [11-35325](#)-B-7 JAMES COXETER
MPD-20

CONTINUED MOTION TO EMPLOY
ROBERT K. SALL AS SPECIAL
COUNSEL AND/OR MOTION TO EMPLOY
DAVID B. PARKER AS SPECIAL
COUNSEL
4-22-14 [[1002](#)]

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. §§ 327(e) and 328(a) and Fed. R. Bankr. P. 2014, the trustee is authorized to employ Parker Shumaker Mills, LLP ("Shumaker") as litigation counsel for the estate. Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014, the trustee is also authorized to employ Sall Spencer Callas & Krueger ("Sall") as litigation counsel for the estate. The trustee is authorized to employ Sall and Parker for the purpose of prosecuting the Malpractice Action (as that term is defined in the motion). Parker's and Sall's fees and costs, if any, shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that Parker and Sall are disinterested persons as that term is defined in 11 U.S.C. § 101(14). The court finds that Parker does not hold an interest adverse to the debtor or the estate with respect to the matter on which he is to be employed.

Counsel for the trustee shall submit an order approving the employment of Parker and Sall that conforms to the foregoing ruling.

11. [12-39826](#)-B-7 ILDEFONSO/ANDREA RUIZ MOTION FOR COMPENSATION FOR
DNL-3 GONZALES AND SISTO, LLP,
ACCOUNTANT(S)
5-20-14 [[114](#)]

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. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$1997.50 in fees and \$5.80 in costs, for a total of \$2003.30 in fees and costs, for services rendered during the period January 4, 2013, through and including May 8, 2014. The foregoing amount is payable to Gonzalez and Sisto, LLP ("G&S") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtors commenced the above-captioned case by the filing of a voluntary petition under Chapter 7 on November 9, 2012. By order entered January 23, 2013 (Dkt. 31), the court authorized the chapter 7 trustee to employ G&S as accountant for the bankruptcy estate, with an effective date of employment of January 4, 2013. The chapter 7 trustee now seeks approval of compensation for G&S for services rendered during the period January 4, 2013, through and including May 8, 2014. The court finds that the approved fees are reasonable compensation for actual, necessary services.

The court will issue a minute order.

12. [12-39826](#)-B-7 ILDEFONSO/ANDREA RUIZ MOTION FOR COMPENSATION BY THE
DNL-4 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
5-20-14 [[119](#)]

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. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$3900.00 in fees and \$82.47 in costs, for a total of \$3982.47 in fees and costs, for services rendered during the period December 11,

2012, through and including May 14, 2014. The foregoing amount is payable to Desmond, Nolan, Livaich & Cunningham ("DNLC") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtors commenced the above-captioned case by the filing of a voluntary petition under Chapter 7 on November 9, 2012. By order entered January 17, 2013 (Dkt. 30), the court authorized the chapter 7 trustee to employ DNLC as counsel for the bankruptcy estate, with an effective date of employment of December 11, 2012. The chapter 7 trustee now seeks approval of compensation for DNLC for services rendered during the period December 11, 2012, through and including May 14, 2014. The court finds that the approved fees are reasonable compensation for actual, necessary services.

The court will issue a minute order.

13. [12-29353](#)-B-11 DANIEL EDSTROM MOTION TO APPROVE SETTLEMENT
DME-6 AGREEMENT WITH AUBURN LAKE
TRAILS PROPERTY OWNERS
ASSOCIATION
4-28-14 [[200](#)]

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

The motion is granted. The debtor is authorized pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 9019 to enter into the Settlement Agreement and Mutual Release (the "Settlement") with Auburn Lake Trails Property Owners Association ("ALT") filed as Exhibit "1" to the motion (Dkt. 200 at 9-13). The debtor is authorized to execute all documents necessary to effect the Settlement. Pursuant to the terms of the Settlement and the Stipulation of Dismissal filed by the debtor and ALT in associated adversary proceeding no. 13-2132-B (the "Adversary Proceeding"), the clerk of the court is authorized to dismiss the Adversary Proceeding pursuant to Fed. R. Bankr. P. 7041, incorporating Fed. R. Civ. P. 41(a)(1)(A)(ii). Except as so ordered, the motion is denied.

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

The debtor alleges without dispute that the Settlement is fair and equitable. By entering into the Settlement, the debtor obtains a waiver of post-petition obligations owed to ALT through May, 2014 in the amount of approximately \$4,000.00. Settlement of the debtor's dispute with ALT also spares the estate that time and expense of continued litigation. The court finds that the compromise is a reasonable exercise of the debtor's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the debtort has carried

his burden of persuading the court that the Settlement is fair and equitable, and the motion is granted.

The court will issue a minute order.

14. [12-38727](#)-B-7 AMY TURNER MOTION TO COMPEL ABANDONMENT
ULC-2 5-19-14 [[31](#)]

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

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtor's interest in the lawsuit (the "Lawsuit") listed on line 21 of the amended Schedule B filed on May 13, 2014 (Dkt. 30) is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Lawsuit is burdensome to the estate. The debtor listed the Lawsuit on Schedule B with a value of \$1.00, and claimed that amount as entirely exempt on Schedule C. The court finds that the Lawsuit is of inconsequential value and benefit to the estate.

The court will issue a minute order.

15. [13-29747](#)-B-13 YANETA LACEY MOTION TO COMPEL AND/OR MOTION
[13-2318](#) PGM-1 FOR SANCTIONS
LACEY V. AUTOVILLE MOTORS 5-15-14 [[27](#)]

Tentative Ruling: The motion is denied.

By this motion the plaintiff debtor seeks an order 1.) compelling defendant Autoville Motors ("Defendant") to respond to interrogatories propounded on Defendant on March 24, 2014; 2.) deeming requests for admission propounded on Defendant on March 24, 2014 admitted and 3.) awarding attorney's fees and costs incurred in connection with the present motion to the debtor. The debtor alleges that the Defendant has failed to respond to the aforementioned discovery requests.

The motion is denied because it is untimely. The court entered a Scheduling Order in this case on December 18, 2013 (Dkt. 19). The Scheduling Order established a deadline for the close of non-expert discovery of April 20, 2014, and a deadline for the close of expert discovery of June 4, 2014. The Scheduling Order defines the "close of discovery" as meaning that "all discovery in this adversary proceeding shall be completed. The word "completed" means that . . . any disputes relative to discovery shall have been resolved by appropriate order, if necessary" (Scheduling Order, p. 3).

The deadlines for close of expert and non-expert discovery have expired in this adversary proceeding. The present motion represents a dispute relative to discovery that has not been resolved by the deadlines set forth in the Scheduling Order. Accordingly, the motion is denied.

The court will issue a minute order.

16. [14-23733](#)-B-7 LINH NGUYEN MOTION TO COMPEL ABANDONMENT
5-23-14 [[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 (1) specify the Schedule B (Dkt. 20, p.2-4) assets that he wishes the court to deem abandoned, and (2) establish that those specific assets have been exempted in Schedule C (Dkt. 20, p.5). Through this motion, the debtor requests that the court compel the chapter 7 trustee to abandon the estate's interest in "certain business assets in this case in Schedule B, including business equipment." The debtor appears to also refer to these items as "all scheduled business assets and operations." However, the debtor fails to identify which assets in Schedule B fall into these general descriptions. Additionally, it is impossible for the court to determine which assets have been claimed as exempt in Schedule C. Debtor lists in Schedule C "tools of the trade", however no such asset is listed in Schedule B.

The court will issue a minute order.

17. [13-31040](#)-B-11 JIMMY ALEXANDER MOTION TO EMPLOY PAMELA R.
PRE-3 ELLIOTT AS ATTORNEY(S)
6-3-14 [[169](#)]

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. [14-22458](#)-B-7 FERDINAND/ROWENA LACSINA MOTION BY SETH L. HANSON TO
SLH-1 WITHDRAW AS ATTORNEY
6-2-14 [[12](#)]

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

19. [11-36068](#)-B-7 WILTZE/THERESA FIGUEROA MOTION TO AVOID LIEN OF
JAD-3 DISCOVER BANK
5-21-14 [[36](#)]

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.

20. [14-21972](#)-B-7 TAMMY SYMONS MOTION FOR DENIAL OF DISCHARGE
UST-1 OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
5-6-14 [[16](#)]

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

The motion is granted. The debtor is denied a discharge in bankruptcy case no. 14-21972-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 May 25, 2007, under 11 U.S.C. § 727 in a case commenced on February 13, 2007 (case no. 07-20955-C-7). Accordingly, 11 U.S.C. § 727(a)(8) provides that the debtor cannot receive a discharge in this case because she has obtained a discharge in a previous case which was commenced within eight years of this case. 11 U.S.C. § 727(a)(8). Under Federal Rule of Bankruptcy Procedure 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.

21. [12-24376](#)-B-7 PAULETTE WEILL MOTION FOR COMPENSATION BY THE
HSM-3 LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR AARON A. AVERY,
TRUSTEE'S ATTORNEY(S)
5-16-14 [[43](#)]

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 \$15,133.00 in fees and \$74.50 in expenses, for a total of \$15,207.50, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on June 22, 2012 (Dkt. 16), the court authorized the chapter 7 trustee to retain the applicant as general bankruptcy counsel in this case. The applicant's employment was effective May 15, 2012.

The applicant now seeks compensation for services rendered and costs incurred during the period of May 15, 2012, through and including June 17, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

22. [13-34976](#)-B-11 CORINNE HUTTLINGER
TMP-10

MOTION TO EMPLOY SK INVESTMENT
ADVISORS, INC. AS ACCOUNTANT(S)
5-28-14 [[109](#)]

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 to employ SK Investment Advisors, Inc. and accountant Kevin M. Sweeney (collectively, the "Accountant") is denied.

The motion is denied because the Accountant is not eligible for employment under 11 U.S.C. § 327(a). Pursuant to 11 U.S.C. § 327(a), the court may approve employment of an accountant for the debtor who does not "hold or represent an interest adverse to the estate," and who is a "disinterested" person, as that term is defined by the Bankruptcy Code. 11 U.S.C. § 327(a). Pursuant to 11 U.S.C. § 101(14), a disinterested person means a person that:

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14) (emphasis added).

11 U.S.C. § 101(10)(A) defines a creditor as, inter alia, an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10)(A).

The application states that the "Accountant is an unsecured creditor in the sum of \$3,767.00, which constitutes .0038% of the total unsecured debt of \$975,834.62" (Dkt. 109, p.2, lines 12-13). The application further states that the unsecured claim is for pre-petition accounting services rendered to the debtor (Dkt. 109, p.2, lines 22-23). This makes the Accountant a creditor of the debtor. The Accountant is therefore not a disinterested person under 11 U.S.C. § 327(a).

The debtor's reliance on In re Roberts, 46 B.R. 815 (Bankr D. Utah 1985) and In re Talsma, 436 B.R. 908 (Bankr. N.D. Texas 2010) is not availing as neither case is controlling authority in the Ninth Circuit and therefore not binding precedent for this court. To the extent the debtor relies on In re Talsma for the proposition that 11 U.S.C. § 1107(b) creates a statutory exception to the dual requirements of 11 U.S.C. §

327(a) that a professional not "hold or represent an interest adverse to the estate" and be a "disinterested" person, such a proposition does not find support under relevant Ninth Circuit authorities. In re CIC Inv. Corp., 175 B.R. 52 (B.A.P. 9th Cir. 1994) ("Other courts have found that the argument that Section 1107(b) applies to exclude the requirements in Section 327(a) requires an interpretation so 'tortured' as to be unacceptable...Section 1107(b) was deemed 'a narrow exception, meant to apply only when the sole reason for disqualification is former employment"). The court in In re CIC Inv. Corp. went on to find that "Code Sections 327(a) and 101(14) explicitly provide that a professional with a prepetition claim against the debtor cannot qualify as disinterested. Section 1107(b) makes no mention of professionals with claims against the debtor. It states only that employment by or representation of a debtor prepetition may not be the sole basis for disqualification. To apply Section 1107(b) to permit the appointment of counsel with claims against the debtor is to ignore the unambiguous language of this statute and of Sections 327(a) and 101(14)." In re CIC Inv. Corp., 175 B.R. at 56.

Finally, the court is not persuaded by the debtor's argument that the Accountant holds no interest adverse to the estate due to the fact that its unsecured claim represents a small percentage of the total unsecured debt. Neither 11 U.S.C. § 327(a) nor 11 U.S.C. § 101(14) contains any language suggesting that a creditor may be retained as a professional person in a chapter 11 case if its claim is small in amount.

The court will issue a minute order.

23. [13-34976](#)-B-11 CORINNE HUTTLINGER
TMP-11

MOTION TO EMPLOY PETERSEN
BOOKKEEPING SERVICES AS
BOOKKEEPER
5-28-14 [[112](#)]

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 to employ Suzi Petersen dba Petersen Bookkeeping Services (the "Bookkeeper") is denied.

The motion is denied because the Bookkeeper is not eligible for employment under 11 U.S.C. § 327(a). Pursuant to 11 U.S.C. § 327(a), the court may approve employment of other professional persons for the debtor who do not "hold or represent an interest adverse to the estate," and who are "disinterested" persons, as that term is defined by the Bankruptcy Code. 11 U.S.C. § 327(a). Pursuant to 11 U.S.C. § 101(14), a disinterested person means a person that:

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14) (emphasis added).

11 U.S.C. § 101(10) (A) defines a creditor as, inter alia, an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10) (A).

The application states that the "Bookkeeper is an unsecured creditor in the sum of \$742.00, which constitutes .0007% of the total unsecured debt of \$975,834.62" (Dkt. 112, p.2, lines 12-13). The application further states that the unsecured claim is for pre-petition bookkeeping services rendered to the debtor (Dkt. 112, p.2, lines 25-26). This makes the Bookkeeper a creditor of the debtor. The Bookkeeper is therefore not a disinterested person under 11 U.S.C. § 327(a).

The debtor's reliance on In re Roberts, 46 B.R. 815 (Bankr D. Utah 1985) and In re Talsma, 436 B.R. 908 (Bankr. N.D. Texas 2010) is not availing as neither case is controlling authority in the Ninth Circuit and therefore not binding precedent for this court. To the extent the debtor relies on In re Talsma for the proposition that 11 U.S.C. § 1107(b) creates a statutory exception to the dual requirements of 11 U.S.C. § 327(a) that a professional not "hold or represent an interest adverse to the estate" and be a "disinterested" person, such an argument does not find support under relevant Ninth Circuit authorities. In re CIC Inv. Corp., 175 B.R. 52 (B.A.P. 9th Cir. 1994) ("Other courts have found that the argument that Section 1107(b) applies to exclude the requirements in Section 327(a) requires an interpretation so 'tortured' as to be unacceptable...Section 1107(b) was deemed 'a narrow exception, meant to apply only when the sole reason for disqualification is former employment"). The court in In re CIC Inv. Corp. went on to find that "Code Sections 327(a) and 101(14) explicitly provide that a professional with a prepetition claim against the debtor cannot qualify as disinterested. Section 1107(b) makes no mention of professionals with claims against the debtor. It states only that employment by or representation of a debtor prepetition may not be the sole basis for disqualification. To apply Section 1107(b) to permit the appointment of counsel with claims against the debtor is to ignore the unambiguous language of this statute and of Sections 327(a) and 101(14)." In re CIC Inv. Corp., 175 B.R. at 56.

Finally, the court is not persuaded by the debtor's argument that the Bookkeeper holds no interest adverse to the estate due to the fact that its unsecured claim represents a small percentage of the total unsecured debt. Neither 11 U.S.C. § 327(a) nor 11 U.S.C. § 101(14) contains any language suggesting that a creditor may be retained as a professional person in a chapter 11 case if its claim is small in amount.

The court will issue a minute order.

24. [11-40578](#)-B-7 JENNE ROSE AND BRIAN CONTINUED MOTION FOR CONTEMPT,
PA-2 SCOTT MOTION TO COMPEL AND/OR MOTION
FOR TURNOVER OF PROPERTY
2-25-14 [[49](#)]

ORDER CONTINUING TO 7/15/14
AT 9:32 A.M.

Disposition Without Oral Argument: Oral argument will not aid the court

in rendering a decision on this matter.

This matter is removed from this calendar. It was continued to July 15, 2014, at 9:32 a.m. pursuant to order entered May 29, 2014 (Dkt. 102) approving the stipulation of the parties for the continuance (Dkt. 101).

25. [08-32280](#)-B-7 HEAVEN INVESTMENT CONTINUED MOTION TO COMPROMISE
DNL-4 HOLDING CORP. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SARAS CHANDRA
3-28-14 [[290](#)]

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

The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement attached as Exhibit "A" to the motion (Dkt. 293) (the "Agreement"). Except as so ordered, the motion is denied.

The court has great latitude in approving settlement 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 without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. She asserts that the Agreement will resolve a heavily disputed adversary proceeding where the probability of success is unknown due to the fact-intensive issues that would likely arise at trial. She further believes that, because of the nature of the adversary proceeding, the Agreement will avoid extraordinary inconvenience and expense of litigation. Additionally, the Agreement will provide for a sure recovery to the estate while preserving the value of such recovery without incurring unnecessary administrative expenses. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried her burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

26. [14-23682](#)-B-7 ELIZABETH/JOSEPH MOTION TO AVOID LIEN OF
JMO-1 GRAZIADEI CITIBANK, N.A.
5-6-14 [[10](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. By this motion the debtors seek to avoid the judicial lien held by Citibank, N.A. ("Citi") as it encumbers

their claim of exemption in real property located at 2403 Walnut Avenue, Sacramento, CA 95608 (the "Property"). As a contested matter under Federal Rule of Bankruptcy Procedure 9014, Citi, as the party against whom the debtors seek relief, must be served with the motion in accordance with Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(b). Federal Rule of Bankruptcy Procedure 7004(h) requires that an insured depository institution be served via certified mail addressed to an officer of the institution unless one of three exceptions enumerated in subsections (1) through (3) apply. Fed. R. Bankr. P. 7004(h). Here, the proof of service (Dkt. 14) indicates that the notice of hearing, motion, and supporting documents were served via U.S. mail on the chapter 7 trustee, the Office of the United States Trustee, and The Moore Law Group which, according to the attached abstract of judgment (Dkt. 10, p.6), represented Citi in a state court proceeding against the debtors. Citi was not served in accordance with Federal Rule of Bankruptcy Procedure 7004(h)'s general rule, and none of its exceptions apply. Accordingly, the motion is dismissed without prejudice.

The court notes that, even if the motion did not suffer from the foregoing procedural defect, it would be denied without prejudice. To avoid a nonconsensual judicial lien, the debtors must satisfy the following elements:

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

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). In this case, the debtors have not shown the existence of a judicial lien encumbering the Property. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). Here, the only evidence that the abstract of judgment was recorded with the county recorder is an unsigned letter from the County of Sacramento Internal Services Agency County Clerk-Recorder (Dkt. 10, p.3). This is insufficient evidence that Citi holds a judicial lien encumbering the Property.

The court will issue a minute order.

27. [13-25948](#)-B-7 ROBERTO CAMACHO CONTINUED MOTION FOR SUMMARY
[13-2248](#) MDI-1 JUDGMENT
RIGGS V. CAMACHO 3-24-14 [[33](#)]

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

This matter is continued to July 15, 2014, at 9:32 a.m.

28. [14-22890](#)-B-7 ANGELINA/MIGUEL PEINADO CONTINUED MOTION TO COMPEL
MMN-1 ABANDONMENT
4-22-14 [[16](#)]

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 continued to July 15, 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 exemptions pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1) has expired.

The court will issue a minute order.

29. [13-33397](#)-B-7 BERNADETTE MOTION FOR ENTRY OF DEFAULT
[13-2361](#) LIABEUUF-ROSENTHAL SNM-4 JUDGMENT
LIABEUUF-ROSENTHAL V. KEYBANK 5-15-14 [[49](#)]
NATIONAL ASSOCIATION

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

The motion is granted. Judgment by default will be rendered in favor of plaintiff Bernadette Anne Liabeuf-Rosenthal (the "Plaintiff") against defendant KeyBank, N.A. (the "Defendant"), declaring that a student loan obligation in the amount of \$32,867.68 owed by the Plaintiff to the Defendant was discharged in the above-captioned bankruptcy case pursuant to 11 U.S.C. § 523(a)(8) upon the receipt of the Plaintiff's discharge on January 27, 2014 (Dkt. 13). Except as so ordered, the motion is denied.

The facts alleged in the adversary complaint (Dkt. 1) (the "Adversary Complaint") include the following. The Plaintiff is a co-signor of a student loan agreement (the "Student Loan") with the Defendant and the daughter of the Plaintiff's ex-husband, Caresa Campos ("Ms. Campos"). The balance owed on the Student Loan was approximately \$32,867.68 as of the petition date in the Plaintiff's bankruptcy case. The proceeds of the Student Loan were paid to Oregon State University for the tuition and benefit of Ms. Campos, with the Plaintiff receiving no consideration. The Student Loan is one of several legal agreements the Plaintiff was allegedly coerced into entering over the course of her thirteen year marriage to her ex-husband, Steven Dwight Rosenthal ("Mr. Rosenthal"). The Plaintiff entered into these legal obligations with limited knowledge of their significance and no ability to repay them without Mr. Rosenthal's support. Mr. Rosenthal was the primary breadwinner of the family during the marriage, with the Plaintiff substantially relying upon him for her support. On or about August 2012, Mr. Rosenthal allegedly began withdrawing financial support for the Plaintiff. This included a cancellation of the Plaintiff's health insurance, which caused a chronic,

disfiguring medical condition to go untreated for over one year. The parties divorced in Nevada by decree entered on October 11, 2012. Despite relying on Mr. Rosenthal over the course of the marriage for financial support, the Adversary Complaint alleges that Mr. Rosenthal "escaped any legal obligation to pay Plaintiff spousal support" (Dkt. 1, p.4, line 1).

The Adversary Complaint further alleges that the Plaintiff was forced to reenter the workforce despite limited knowledge and training, as well as a disfiguring medical condition, due to the termination of all financial support from Mr. Rosenthal. The Plaintiff has found work as a clerk where she is compensated at a rate of \$13.00 per hour. This represents the Plaintiff's only source of income. After accounting for monthly income and necessary monthly expenses, the Plaintiff's monthly net income is allegedly negative \$478.56. Based on that uncontested allegation, the Plaintiff lacks sufficient funds to make even minimal payments toward the Student Loan. She would have to forgo basic necessities such as food, clothing, medical treatment, and shelter in order to repay the Student Loan. The Adversary Complaint alleges that the Plaintiff's financial circumstances will persist indefinitely.

The Adversary Complaint finally alleges that the Plaintiff has made a good faith effort to repay the Student Loan but has lacked funds necessary for basic living expenses.

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

The court will issue a minute order granting the motion. The Plaintiff shall submit a separate judgment that conforms to the court's ruling and complies with F.R.Bankr.P. 7054, incorporating F.R.Civ.P. 54(a).

30. [14-23498](#)-B-7 JESSIE/MARIFEL BARTOLOME MOTION TO RECONSIDER
MDM-1 5-16-14 [[19](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1) and is unopposed. However, because the debtors are pro se, the court issues the following abbreviated tentative ruling.

The motion is granted. The order entered April 29, 2014 (Dkt. 14) (the "Order"), which granted the debtors' application to waive the chapter 7 filing fee filed April 4, 2014 (Dkt. 5) (the "Application"), is modified. The filing fee is not waived; rather, the debtors are ordered to pay the full balance of the chapter 7 filing fee on or before July 15, 2014.

The debtors commenced the above-captioned case on April 4, 2014, by filing a voluntary petition under chapter 7 (Dkt. 1). On April 4, 2014, the debtors filed the Application, which resulted in the court entering the Order. The trustee asserts that, at the time of the Application, the debtors' schedules were incomplete and/or inaccurate. Specifically, he

argues that, based on the debtors' testimony at the first meeting of creditors held on May 13, 2014, the debtors omitted from their original Schedule B (Dkt. 1, p.16), which is among the schedules the court analyzed in first considering the Application, several vehicles totaling \$11,600.00, two retirement accounts, and income tax refunds totaling \$7,500.00. The trustee requested at the meeting of creditors that the debtors file amended schedules properly disclosing these omitted assets. The court notes that the debtors did file amended Schedules B and C on June 10, 2014 (Dkt. 28) disclosing joint debtor Jessie Bartolome ("Mr. Bartolome")'s interest in a 401(k) retirement plan valued at \$14,476.49 as well as the debtors' interest in a tax refund received on February 13, 2014, valued at \$7,500.00. Amended Schedule B does not disclose any interest the debtors allegedly have in the various vehicles referenced in the trustee's motion or joint debtor Marifel Bartolome's retirement account. The trustee now requests that the court reconsider the Order because it is not based on an honest and accurate disclosure of all assets and income.

The Order itself states: "However, the Court may order the debtor to pay the filing fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted." Pursuant to that provision, the court finds that the trustee's administration of the bankruptcy case shows that the debtors do not qualify for a waiver of the chapter 7 filing fee. The court's authority to waive the filing and other fees for chapter 7 cases is governed by 28 U.S.C. § 1930, and may be exercised only in accordance with the policies of the Judicial Conference of the United States (the "Judicial Conference"). The procedures promulgated by the Judicial Conference on August 11, 2005, particularly paragraph II, state that the district court or the bankruptcy court may waive the chapter 7 filing fee for an individual debtor who: (a) has income less than 150% of the U.S. Department of Health and Human Services' Poverty Guidelines for 2014 applicable to a family of the size involved (the "Poverty Guidelines"); and (b) is unable to pay that fee in installments. Thus, determining whether to waive the chapter 7 filing fee is a two-prong test.

Regarding the first prong of the analysis, the Judicial Conference procedures make clear at paragraph II that the income to be used for comparison to the Poverty Guidelines is the "Total Combined Monthly Income" as of the date of the bankruptcy filing as reported on Line 16 of Schedule I ("Schedule I Income"). Here, the debtors' Schedule I Income is \$2,563.77 (Dkt. 1, p.28). The Application states at Part 1.1 that the debtors' household size is eight (8). 150% of the Poverty Guidelines for a household of eight is \$5,011.25. Thus, the debtors' Schedule I Income is less than 150% of the Poverty Guidelines and the first part of the analysis promulgated by the Judicial Conference is satisfied.

However, the court finds that the debtors are not debtors who are unable to pay the filing fee in installments. In light of the \$7,500.00 tax refund the debtors received on February 13, 2014, the court finds that, although their Schedule I Income is less than 150% of the Poverty Guidelines, they nonetheless have sufficient assets to pay the filing fee. Accordingly, the court grants the motion and modifies the Order to require payment in full of the filing fee.

The court will issue a minute order.