

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**August 13, 2018 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 and 4.

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions or objects to the tentative ruling. If you wish to oppose the motion or otherwise be heard, please so advise Judge McManus. Please do not identify yourself or explain the nature of your opposition. If anyone wishes to be heard, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion or object to the proposed ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 10, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 27, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 4, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE**

August 13, 2018 at 10:00 a.m.

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.     [17-27321](#)-A-7     CANTECA FOODS, INC.                     MOTION TO  
          [HSM](#)-6   APPROVE COMPROMISE  
   7-16-18 [[122](#)]

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

The trustee requests approval of a settlement agreement between the estate and Artisan Bakers, resolving a \$68,522.23 receivable owed to the estate by Artisan for the debtor's pre-petition delivery of baked goods to Artisan. Artisan disputes owing the entire receivable amount, contending that it suffered damages due to the debtor's operational shutdown.

The trustee seeks approval of the transaction also as a sale. He also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

Under the terms of the compromise, Artisan will pay \$51,391.67 to the estate, in full satisfaction of the receivable. The parties will execute mutual releases, including waiver of Cal. Civ. Code § 1542. The trustee will dismiss the pending turnover complaint against Artisan. The court notes that Artisan has not filed a proof of claim in the case.

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 inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

The court will approve the transaction also as a sale under 11 U.S.C. § 363(b). 11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

As sale of the receivable will generate approximately 75% of the value of the receivable, without the necessity for further litigation, risks of litigation, costs of litigation, and delay of litigation, the sale is in the best interest of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h). The motion will be granted.

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

The chapter 7 trustee requests authority to sell for \$379,000 the estate's 100% interest in real property in Yuba City, California to Gene Jeter, Jr. The trustee seeks to pay from escrow all encumbrances, closing costs including real estate commissions, withholdings for state and/or federal taxes, and the debtors' exemption, less \$10,700 to the estate. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

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

The trustee seeks to pay the following encumbrances and charges from escrow:

- closing costs, including real estate commission;
- property taxes for unknown amount, prorated through the close of escrow;
- first mortgage for approximately \$69,249.25, held by Wells Fargo Bank;
- a \$65,320.16 tax lien in favor of the California Employment and Development Department (EDD's total claim against the estate is \$110,175.71, including a priority unsecured portion);
- \$164,300 on account of the debtors' \$175,000 exemption claim; the reduced amount is based on a court-approved compromise, accounting for the debtors' purchase of a \$10,700 deposit with a retirement community from the estate (Docket 90);
- \$10,700 to the estate on account of the purchase of the debtors' retirement community deposit;
- the net proceeds, estimated at \$44,883.60, will be split evenly among the estate and Indemnity Company of California, pursuant to a carve-out agreement approved by the court (Docket 90); ICC's claim is based on a judicial lien for \$1,346,630; the estate is estimated to receive approximately \$22,441.80 and ICC is estimated to receive approximately \$22,441.80.

In total, the trustee estimates that the sale will generate approximately \$33,141.80 for the estate (\$10,700 + \$22,441.80).

The sale is subject to a lease with Sunrun, Inc., identified as items 10 and 11 in the preliminary title report. Docket 101, Ex. B.

The sale will generate proceeds for creditors of the estate. Hence, the sale will be approved, subject to one condition, 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) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

The court does not find in the motion a reference to whether and to what extent the sale will trigger a tax liability for the estate. Subject to the trustee clarifying this point, the motion will be granted.

3. [18-20728](#)-A-7 ELIZABETH WILSON MOTION FOR  
[AP-1](#) RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 6-12-18 [[25](#)]

**Tentative Ruling:** The motion will be dismissed as moot.

The hearing on this motion was continued from July 16, 2018, due to the debtor's conversion of the case from chapter 13 to chapter 7.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Orangevale, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30<sup>th</sup> day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On August 10, 2017, the debtor filed a chapter 13 case (case no. 17-25305). But, the court dismissed that case on January 22, 2018 due to the debtor's failure to make plan payments. The debtor filed the instant case on February 9, 2018. The prior chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on March 11, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30<sup>th</sup> day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 11, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

4. [15-27448](#)-A-7 JOHN/SHAWNTA ODUM MOTION TO  
[NOS-4](#) APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
7-19-18 [[89](#)]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Christopher Hughes of Nossaman, L.L.P. (previously of Hughes Law Corporation), general counsel for the trustee, has filed a first and final motion for approval of compensation. The requested compensation consists of \$13,000 in fees (reduced from \$29,687.50 in general counsel fees incurred by Hughes Law Corporation and \$13,675 in general counsel fees incurred by Nossaman, L.L.P. (excluding any special counsel compensation)) and \$184.07 in expenses, for a total of \$13,184.07.

This motion covers the period from September 30, 2015 through the present, encompassing work by both HLC and Nossaman. The movant is not seeking and will not be seeking contingency fee compensation, the only compensation approved by the court, for special counsel services by either HLC or Nossaman. As the court understands, HLC is no longer operating.

The court approved the movant's employment, under the Hughes Law Corporation name, as the trustee's attorney on October 6, 2015. Docket 14. The court approved the movant's employment, under the Nossaman, L.L.P. name, as the trustee's attorney on February 18, 2017. Docket 59. On February 18, 2017, the court also granted a substitution of Nossaman in the place of HLC, as counsel for the trustee. Docket 60. In performing its services, the movant charged hourly rates of \$275, \$295, \$300, \$350, and \$400.

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

- (1) reviewing petition documents,
- (2) analyzing records pertaining to pre-petition litigation involving the debtors and their businesses,
- (3) assessing the procedural posture of the litigation,
- (4) analyzing records involving the debtors' businesses,
- (5) conducting various discovery,
- (6) negotiating the sale of equity in the debtors' vehicles,
- (7) preparing and prosecuting a motion to approve the sale,
- (8) communicating with an insurance company about payments on account of damages to the debtors' vehicles,
- (9) assessing substantive consolidation of the debtors' estate with their businesses,
- (10) assessing prosecution of denial of discharge,

(11) monitoring nondischargeability and denial of discharge litigation against the debtors by creditors,

(12) attending court hearings,

(13) assisting the trustee with the general administration of the estate, and

(14) 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.

5. [18-23070](#)-A-7 WILLIAM/LORINDA HANSEN MOTION TO  
[DMB](#)-1 AVOID JUDICIAL LIEN  
AMERICAN EXPRESS BANK, F.S.B. 7-3-18 [[12](#)]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against debtor "Bill Hansen" in favor of American Express Bank for the sum of \$2,091.73 on March 7, 2011. The abstract of judgment was recorded with Shasta County on June 7, 2011. That lien attached to the debtor's interest in a residential real property in Redding, California. The debtor asks for avoidance of the lien under 11 U.S.C. § 522(f) (1).

The motion will be denied because the debtor amended Schedule C on June 21, 2018, to change the exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors, informing them of the changed exemption. Dockets 10 & 11. Parties in interest, including creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b) (1). Because the debtor has not afforded creditors such an opportunity, the motion will be denied.

6. [18-23070](#)-A-7 WILLIAM/LORINDA HANSEN MOTION TO  
[DMB](#)-2 AVOID JUDICIAL LIEN  
VS. DISCOVER BANK 7-3-18 [[17](#)]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against debtor William Hansen in favor of Discover Bank for the sum of \$5,985.09 on September 12, 2011. The abstract of judgment was recorded with Shasta County on January 4, 2012. That lien attached to the debtor's interest in a residential real property in Redding, California. The debtor asks for avoidance of the lien under 11 U.S.C. § 522(f) (1).

The motion will be denied because the debtor amended Schedule C on June 21, 2018, to change the exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors, informing them of the changed exemption. Dockets 10 & 11. Parties in interest, including creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b) (1). Because the debtor has not afforded creditors such an opportunity, the motion will be denied.

7. [18-23070](#)-A-7 WILLIAM/LORINDA HANSEN MOTION TO  
[DMB](#)-3 AVOID JUDICIAL LIEN  
VS. TRI COUNTIES BANK 7-3-18 [[22](#)]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against debtor William Hansen in favor of Tri Counties Bank for the sum of \$61,375.16 on September 16, 2011. The abstract of judgment was recorded with Shasta County on October 5, 2011. That lien attached to the debtor's interest in a residential real property in Redding, California. The debtor asks for avoidance of the lien under 11 U.S.C. § 522(f)(1).

The motion will be denied because the debtor amended Schedule C on June 21, 2018, to change the exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors, informing them of the changed exemption. Dockets 10 & 11. Parties in interest, including creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded creditors such an opportunity, the motion will be denied.



**FINAL RULINGS BEGIN HERE**

8. [18-21450](#)-A-7 SALOMON HERRERA MOTION FOR  
[NLL](#)-1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK, N.A. VS. 7-5-18 [[46](#)]

**Final Ruling:** The motion will be dismissed as moot because the case was dismissed on August 6, 2018, automatically dissolving the automatic stay. Docket 52; 11 U.S.C. § 362(c)(2)(B). And, the motion does not ask for retroactive or in rem relief under section 362(d)(4).

9. [18-23067](#)-A-7 CRISTINA MCMAINS MOTION FOR  
[JHW](#)-1 RELIEF FROM AUTOMATIC STAY  
SANTANDER CONSUMER USA, INC. VS. 7-2-18 [[24](#)]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2012 Dodge Grand Caravan vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on May 16, 2018 and a meeting of creditors was first convened on June 15, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 15. The debtor did not file a statement of intention.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, the debtor did not file a statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 15, 2018, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on June 15, 2018, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 15, 2018.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

10. [16-28083](#)-A-7      STEPHEN LEMOS      MOTION TO  
[DMW](#)-5      APPROVE COMPENSATION OF TRUSTEE  
7-17-18 [[108](#)]

**Final Ruling:** The movant has provided only 27 days' notice of the hearing on this motion. Dockets 111 & 113. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 112. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

11. [17-21995](#)-A-7      JASVINDER CHAHAL      MOTION TO  
[SCB](#)-28      APPROVE COMPENSATION OF TRUSTEE  
7-10-18 [[272](#)]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 chapter 7 trustee, Gary Farrar, has filed first and final motion for approval of compensation. The requested compensation consists of \$54,376.71 in fees and \$1,319.92 in expenses, for a total of \$55,696.63. The services for the sought compensation were provided from April 6, 2017 through the present. The sought compensation represents 160.4 hours of services.

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

The movant will make or has made \$1,037,556.85 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$54,376.71 (\$1,250 (25% of the first \$5,000) + \$4,500 (10% of the next \$45,000) + \$47,500 (5% of the next \$950,000) + \$1,126.71 (3% on anything above \$1 million (\$37,556.85)). Hence, the requested trustee fees of \$54,376.71 do not exceed the cap of section 326(a).

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

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

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9<sup>th</sup> Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

- (1) reviewing petition documents and analyzing assets,
- (2) conducting the meeting of creditors,
- (3) evaluating the debtor's interest in a trucking business, a business lease, and real property,
- (4) employing professionals to assist the trustee with the administration of the estate,
- (5) communicating with the estate's professionals about various issues,
- (6) reviewing claims, including various and multiple tax liens and a lien on the debtor's many vehicles,
- (7) communicating with the debtor and the estate's accountant about the preparation of outstanding tax returns and revision of prior year returns,
- (8) negotiating multiple tax lien claims,

- (9) communicating with the debtor about the sale of many trucks and tanks,
- (10) negotiating the sale of the trucks and tanks,
- (11) reviewing stay relief motion papers to determine whether to oppose it,
- (12) assessing abandonment of the business lease and payment of post-petition lease liability,
- (13) reviewing pre-petition transfers, prosecuting an avoidance claim, and negotiating a compromise of the claim,
- (14) listing, prosecuting, and negotiating the sale of the debtor's residence,
- (15) reviewing various pleadings and documents,
- (16) addressing various tax and accounting issues,
- (17) preparing final report, and
- (18) preparing compensation motion.

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