

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 20, 2013 at 9:32 A.M.

-
1. [11-35325](#)-B-7 JAMES COXETER MOTION TO COMPROMISE
MPD-7 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GEORGE MISKE
7-23-13 [[862](#)]

Tentative Ruling: The creditor C.J.A. Corporation's ("CJA") opposition is overruled. The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the "Stipulation for Carve Out" (the "Stipulation") attached as Exhibit A to the motion (Dkt. 865). 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 trustee asserts the compromise is fair and equitable. Without the Stipulation, the bankruptcy estate would be subject to prosecuting claims against the secured creditor George Miske ("Miske") with no ability to pay for counsel to represent its interests. The proposed Stipulation avoids this situation. Furthermore, the creditors would view the compromise favorably because under the terms of the Stipulation, Miske is voluntarily releasing substantial funds to the estate for payment of chapter 7 administrative claims and for payment of lower level creditors. Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Stipulation is fair and equitable, and the motion is granted.

CJA's limited opposition is overruled. While the Stipulation does not provide for payment to the debtor on account of the "Malpractice Claim," the amount to be paid to the debtor is yet to be negotiated. The terms in the Stipulation relating to the Malpractice Claim are simply the trustee's rough estimate as to how the proceeds from the Malpractice Claim will be distributed for any possible compromise or settlement of the Malpractice Claim. If and when the trustee resolves the Malpractice Claim, he will file a motion for authority to compromise or settle the Malpractice Claim pursuant to Fed. R. Bankr. P. 9019. As stated in the paragraph 23 of the Stipulation, any compromise or settlement of the Malpractice Claim is "subject to [further] bankruptcy court approval."

The court will issue a minute order.

2. [08-31840](#)-B-7 CLINTON MYERS OBJECTION TO CLAIM OF AUBURN
MLG-104 MANOR HOLDING CORP. PROFIT
SHARING PLAN & TRUST, CLAIM
NUMBER 81
7-3-13 [[1069](#)]

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

The trustee's objection is sustained, and claim No. 81, filed on March 20, 2012 by Auburn Manor Holding Corp. Profit Sharing Plan & Trust, in the amount of \$1,558,574.90 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 30, 2009. The Claim was filed on March 20, 2012.

The court will issue a minute order.

3. [08-31840](#)-B-7 CLINTON MYERS OBJECTION TO CLAIM OF ARROWEST
MLG-105 PROPERTIES, INC., CLAIM NUMBER
82
7-3-13 [[1075](#)]

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

The trustee's objection is sustained, and claim No. 82, filed on March 20, 2012 by Arrowest Properties, Inc., in the amount of \$377,541.77 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was April 30, 2009. The Claim was filed on March 20, 2012.

The court will issue a minute order.

4. [13-25503](#)-B-11 SUNRISE VISTA MORTGAGE MOTION TO PROHIBIT USE OF CASH
WJF-1 CORPORATION COLLATERAL AND FOR SEGREGATION
OF CASH COLLATERAL AND/OR
MOTION TO PROVIDE AN ACCOUNTING
OF ALL CASH COLLATERAL
7-23-13 [[55](#)]

Tentative Ruling: The motion is converted to an adversary proceeding. Pursuant to Fed. R. Bankr. P. 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number WJF-1 shall no longer be used in reference to this matter. On or before August 30, 2013, the movant Lyon Financial Services/U.S. Bank, as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Fed. R. Bankr. P. 7008 and all other applicable rules and

that names debtor, Sunrise Vista Mortgage Corporation, as defendant. On or before August 30, 2013, the plaintiff shall serve a summons and the amended complaint. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(3), the defendant shall have to and including the later of September 13, 2013 or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

The motion is converted to an adversary proceeding because it includes requests for relief that can only be obtained, if at all, by adversary proceeding. See Fed. R. Bankr. P. 7001(2) and (7); In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court will issue a minute order.

5. [12-37814](#)-B-7 TIMOTHY/JESSICA MEILLER CONTINUED MOTION TO SELL
JRR-2 6-17-13 [[45](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe. The trustee seeks authorization from the court to short sell real property located at 410 Lyndhurst Avenue, Roseville, California (APN 472-310-045-000). The trustee, however, has failed to submit evidence that there is an actual short sale can occur after court approval. The trustee has filed no evidence in support of the motion that shows that the lender secured by a deed of trust in the real property consents to the sale. The trustee merely alleges in the motion that he proposes to pay PNC Bank approximately \$180,000 in full satisfaction of its lien. There is no evidence that PNC Bank has agreed to accept that amount. Indeed, the trustee also alleges in the motion that the amounts to be paid to lienholders may change during short sale negotiations (Dkt. 45 at 3).

The trustee essentially seeks a court order "pre-approving" a short sale to which the necessary creditors may or may not agree. The court has no jurisdiction to issue such an order in the absence of an actual case or controversy.

The court will issue a minute order.

6. [13-25214](#)-B-11 ABF LIMITED PARTNERSHIP MOTION FOR ORDER PROHIBITING
USE OF CASH COLLATERAL AND
COMPELLING DEBTOR TO ACCOUNT
FOR AND TURN OVER CASH
COLLATERAL
7-11-13 [[28](#)]

Tentative Ruling: The motion is converted to an adversary proceeding. Pursuant to Fed. R. Bankr. P. 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number. On or before August 30, 2013, the movant U.S. Bank as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Fed. R. Bankr. P. 7008

and all other applicable rules and that names debtor, ABF Limited Partnership, as defendant. On or before August 30, 2013, the plaintiff shall serve a summons and the amended complaint. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(3), the defendant shall have to and including the later of September 13, 2013 or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

The motion is converted to an adversary proceeding because it includes requests for relief that can only be obtained, if at all, by adversary proceeding. See Fed. R. Bankr. P. 7001(7); In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court will issue a minute order.

7. [12-26920](#)-B-7 JOSE AMBRIZ CARRANZA AND MOTION TO AVOID LIEN OF LVNV
AKH-1 YARI AMBRIZ FUNDING, LLC
7-23-13 [[25](#)]

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

The motion is denied without prejudice.

The motion is denied without prejudice because the debtors failed to serve LVNV Funding, LLC, in a manner that complies with Fed. R. Bankr. P. 7004(b)(3). Specifically, corporate creditors must be served to the attention of an officer, a managing or general agent, or any other agent authorized to receive service of process. While the debtors did serve attorney "Ivan S. Lavinsky," there is no showing that he is an agent authorized to receive service of process, nor is there any indication that he is impliedly authorized to receive service of process on LVNV Funding's behalf. See e.g., Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. B.A.P. 2004); In re Focus Media, 387 F.3d. 1077 (9th Cir. 2004).

The court will issue a minute order.

8. [12-26920](#)-B-7 JOSE AMBRIZ CARRANZA AND MOTION TO AVOID LIEN OF
AKH-2 YARI AMBRIZ PORTFOLIO RECOVERY ASSOCIATES,
LLC
7-23-13 [[30](#)]

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). The judicial lien in favor of Portfolio Recovery Associates, LLC, recorded in the official records of San Joaquin County, Document No. 2007-217909, is avoided as against the real property located at 9135 Hereford Court, Stockton CA 95209.

The subject real property has a value of \$130,400.00 as of the date of

the petition. The unavoidable liens total \$163,353.93. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they 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 subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

9. [12-26920](#)-B-7 JOSE AMBRIZ CARRANZA AND MOTION TO AVOID LIEN OF
AKH-3 YARI AMBRIZ NATIONAL CREDIT ACCEPTANCE,
INC.
7-23-13 [[35](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of National Credit Acceptance, Inc., recorded in the official records of San Joaquin County, Document No. 2007-048695, is avoided as against the real property located at 9135 Hereford Court, Stockton CA 95209.

The subject real property has a value of \$130,400.00 as of the date of the petition. The unavoidable liens total \$163,353.93. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they 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 subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

10. [13-26422](#)-B-7 BONNIE GONZAGA MOTION TO AVOID LIEN OF CHASE
PLC-1 BANK USA, N.A.
7-15-13 [[13](#)]

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). The judicial lien in favor of Chase Bank USA, N.A, recorded in the official records of Sacramento County, Book 20110823, Page 0999, is avoided as against the real property located at 170 Danny Drive, Galt, CA 95632.

The subject real property has a value of \$92,414.00 as of the date of the petition. The unavoidable liens total \$104,901.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section

703.140(b)(1), under which she exempted \$100.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

11. [11-49230](#)-B-7 DONOHUE & SONS, INC. AMENDED MOTION TO EMPLOY
DMW - 2 ZEZOFF, YUEN & CO. AS
ACCOUNTANT(S)
7-17-13 [[57](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is incomplete. 11 U.S.C. § 327(a) allows the trustee, with the court's approval, to employ a professional that does "not hold or represent an interest adverse to the estate, and that are disinterested persons." In this case, the trustee has not presented evidence in support of the motion that addresses the foregoing standard. The motion references a "Zezoff declaration," but no such declaration is filed on the docket of the case. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

12. [12-37732](#)-B-7 CHARLES/MARY MINZ MOTION TO AVOID LIEN OF CAPITAL
SJJ-5 ONE BANK (USA), N.A.
7-17-13 [[41](#)]

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 Placer County, Document No. 2012-003-5823-00, is avoided for any amount over \$4737.63 as against the real property located at 3893 Southpark Place, Auburn, California.

The subject real property has a value of \$237,000.00 as of the date of the petition. The unavoidable liens total \$182,262.37. The debtors claimed the property as exempt under Oregon Revised Statutes Sections 18.395 and 18.402, under which they exempted \$50,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$4,737.63 to support the judicial lien. Therefore, the lien is unavoidable to \$4,737.63. To the extent that the fixing of the judicial lien impairs debtor's exemption of real property, \$4,844.48 of the lien is avoided.

The court will issue a minute order.

13. [12-30434](#)-B-7 SHARON BARCELLOS-TSUTSUI MOTION TO EMPLOY GABRIELSON AND
DMW-1 COMPANY AS ACCOUNTANT(S)
5-17-13 [[23](#)]

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 Gabrielson & Company ("Gabrielson") as accountants for the chapter 7 trustee. Gabrielson'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 Gabrielson is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court will issue a minute order.

14. [12-31035](#)-B-7 PATRICK/MARTHA MORGAN CONTINUED MOTION TO SELL
JRR-2 6-17-13 [[51](#)]

Tentative Ruling: This matter continued from July 23, 2013. Nothing new relating to this matter having been filed since the continuance, the court read issues its prior tentative ruling.

The written opposition filed by secured creditor Bank of America, N.A. is sustained. The motion is dismissed without prejudice.

The motion is not ripe. The trustee seeks authorization from the court to short sell real property located at 3747 Kimberly Rd., Cameron Park, California. The trustee, however, has failed to submit evidence that there is an actual short sale can occur after court approval. To the contrary, the response of Bank of America, N.A. ("BoFA"), the holder of the first deed of trust, states BoFA has not consented to the short sale and requests that the motion be denied. The trustee essentially seeks a court order "pre-approving" a short sale to which the necessary creditors may or may not agree. The court has no jurisdiction to issue such an order in the absence of an actual case or controversy.

The court will issue a minute order.

15. [13-23535](#)-B-7 JOHN LEE OBJECTION TO DEBTOR'S CLAIM OF
HSM-3 EXEMPTIONS
7-19-13 [[29](#)]

Tentative Ruling: The chapter 7 trustee's objections are sustained in part and overruled in part. The trustee's objection to the debtor's claim of exemption in an anticipated tax refund for calendar year 2012 (the "Tax Refund") under Cal. Civ. Proc. Code § 704.070 is sustained and the claim of exemption is disallowed in its entirety. The trustee's

objection to the debtor's claim of exemption under Cal. Civ. Proc. Code § 704.115(a)(1) & (2), (b) in an account described as "Joint Tenants with Right of Survivorship with Edward Jones" and ending with digits 88-1-7 and listed on Schedule C with a value of \$28,964.63 (the "Securities Account") is sustained and the claim of exemption is disallowed in its entirety. The trustee's objections to the debtor's claims of exemption in a Roth IRA account, a 401(k) retirement account and a simplified employee pension account are overruled. The trustee's objection to the debtor's claim of exemption in real property located at 133 Rebecca Way, Folsom, California (the "Real Property") is overruled.

The trustee's objection to the claim of exemption in the Tax Refund is sustained for the reasons set forth in the trustee's objection. The Tax Refund does not constitute "earnings" or "paid earnings" that can be exempted under § 704.070. In re Orndoff, 100 B.R. 516, 519 (E.D. Cal. 1989) (Dahl, J.).

The trustee's objection to the claim of exemption in the Securities Account is sustained for the reasons set forth in the trustee's objection. The Securities Account does not qualify as a "private retirement plan" for the purposes of Cal. Civ. Proc. Code § 704.115(a)(1) & (2), (b). See In re Lieberman, 245 F.3d 1090, 1095 (9th Cir. 2001); In re Simpson, 366 B.R. 64 (9th Cir. BAP 2007).

The trustee's objection to the claims of exemption in the Roth IRA, the 401(k) plan, and the simplified employee pension account are overruled because the trustee has not sustained his burden of rebutting a presumptively valid claim of exemption.

A claimed exemption is "presumptively valid." Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP2010) (citing Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n. 3 (9th Cir.1999)). "If a party in interest timely objects, 'the objecting party has the burden of proving that the exemptions are not properly claimed.'" Nicholson, 435 B.R. at 630 (quoting Rule 4003(c)). Initially, this means that the objecting party has the burden of production and the burden of persuasion. Carter, 182 F.3d at 1029 n. 3. The objecting party must produce evidence to rebut the presumptively valid exemption. Id. Once rebutted, the burden of production then shifts to the debtor to come forward with unequivocal evidence that the exemption is proper. Id. The burden of persuasion, however, always remains with the objecting party. Id.

In re Richey, 2011 WL 4485900 at *9 (9th Cir. BAP Aug. 8, 2011). In this case, the trustee has presented no evidence to rebut the presumptive validity of the claims of exemption. He merely raises questions as to their validity based on his assertion that the debtor has not "demonstrated" that the claims are valid. This is not sufficient to shift the burden of production to the debtor.

The trustee's objection to the claim of exemption in the Real Property is overruled because the trustee is not objecting to either the statute under which the debtor claims of exemption in the Real Property, nor is he objecting to the amount of the claimed exemption. Instead, the trustee disputes the debtor's valuation of the Real Property. A dispute over the value of an asset claimed as exempt would be an issue ripe for adjudication on an objection of this type if the effect of failing to object within the time period established by Bankruptcy Rule 4003 caused

the property claimed as exempt to revest in the debtor. The court is aware of the Ninth Circuit Bankruptcy Appellate Panel's statement in In re Mwangi, 432 B.R. 812, 821 (9th Cir. BAP 2010) that "if the 30-day objection period mandated by Bankruptcy Rule 4003(b) runs without objection, "[p]roperty claimed as exempt leaves the estate and reverts in the debtor." Mwangi, 432 B.R. at 821 (quoting Kretzer v. DFW Fed. Credit Union (In re Kretzer), 48 B.R. 585, 588 (Bankr. D. Nev. 1985). However, the court does not subscribe to that view, because Mwangi is inconsistent with the United States Supreme Court's statement in Schwab v. Reilly, (2010) that "[i]f an interested party does not object to the claimed interest by the time the Rule 4003 period expires, title to the asset will remain with the estate pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of the exemption." In light of the foregoing, if the trustee believes that there is non-exempt value in the Real Property that can be administered for the benefit of creditors, nothing prevents him from marketing the Real Property for sale in order to ascertain whether the market supports his view of value.

The court will issue a minute order.

16. [11-22237](#)-B-7 MONTE WATSON CONTINUED MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS SPECIAL COUNSEL
DNL-1 7-9-13 [[20](#)]

Disposition Without Oral Argument: This motion continued from August 6, 2013, for the purpose of allowing the chapter 7 trustee to submit supplemental evidence of the estate's interest in real property, which interest the trustee seeks to protect by the instant motion for employment of special counsel. The trustee timely filed supplemental evidence on August 8, 2013 (Dkt. 26). 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(e) and 328(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ the Law Offices of Desmond, Nolan, Livaich & Cunningham ("DNL"), as special counsel, on the terms and for the purposes set forth in the motion. DNL'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 chapter 7 trustee shall submit an order approving employment of DNL that conforms to the foregoing ruling.

17. [13-26142](#)-B-7 JOLYNN GALDAMEZ MCKEY MOTION FOR ORDER AVOIDING WAGE GARNISHMENT AND/OR MOTION FOR ORDER PERMITTING TURNOVER OF GARNISHED FUNDS
EKA-1 7-23-13 [[14](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A), subject to

the provisions of 11 U.S.C. § 349. The judicial lien in favor of American General Financial, Services, Inc., created by service of an earnings withholding order (the "Order") by the Los Angeles County Sheriff's Department (the "Sheriff") on Guess?, Inc., the debtor's employer, is avoided as against the \$4,079.72 in wages withheld pursuant to the Order (the "Withheld Funds") and currently held by the Sheriff. The Sheriff shall return the Withheld Funds to the debtor. Except as so ordered, the motion is denied.

The debtor claimed the Withheld Funds as exempt under California Code of Civil Procedure Section 704.140(b)(5), under which she claimed the Withheld Funds as entirely exempt. The respondent holds a judicial lien created pursuant to Cal. Civ. Proc. Code § 706.029 by the service of an earnings withholding order on the debtor's employer. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is \$0.00 of equity in the Withheld Funds to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Withheld Funds and its fixing is avoided.

The court will issue a minute order.

18. [13-20644](#)-B-7 PERRY YUEN CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
RTD-2 7-8-13 [[334](#)]

Tentative Ruling: The objection is sustained in part. The debtor's claim of exemption in real property located at 1015 25th Street and 2500, 2502 and 2504 J Street, Sacramento, California (the "Real Property") is disallowed. The debtor's claim of exemption in his wife's diamond wedding ring is disallowed. The debtor's claim of exemption in a civil lawsuit against Savannah McCall, Sacramento County Superior Court case no. 34-2011-00100567 is disallowed. The movant's objection to the debtor's "mixing" of exemptions under Cal. Civ. Proc. Code §§ 703 and 704 is dismissed. Except as so ordered, the objection is overruled.

The movant's objection to the debtor's "mixing" of exemptions under Cal. Civ. Proc. Code §§ 703 and 704 is moot. On August 6, 2013, the debtor filed an amended Schedule C which claims exemptions only under Cal. Civ. Proc. Code § 704, et. seq. This ruling addresses the debtor's exemptions as they appear on the amended Schedule C, not the Schedule C which was filed at the time this objection was filed.

As for the remainder of the movant's objections, the court's analysis is guided by the following:

A claimed exemption is "presumptively valid." Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP2010) (citing Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n. 3 (9th Cir.1999)). "If a party in interest timely objects, 'the objecting party has the burden of proving that the exemptions are not properly claimed.'" Nicholson, 435 B.R. at 630 (quoting Rule 4003(c)). Initially, this means that the objecting party has the burden of production and the burden of persuasion. Carter, 182 F.3d at 1029 n. 3. The objecting party must produce evidence to rebut the presumptively valid exemption. Id. Once rebutted, the burden of production then shifts to the debtor to come forward with unequivocal evidence that the

exemption is proper. Id. The burden of persuasion, however, always remains with the objecting party. Id.

In re Richey, 2011 WL 4485900 at *9 (9th Cir. BAP Aug. 8, 2011).

The movant's objection to the debtor's claim of exemption of the Real Property pursuant to § 704.730 is sustained because the Real Property is not a "homestead" as defined by California law. The Real Property is described in the debtor's schedules as a two-story "commercial building" with 9,927 rentable square feet, comprised of three retail spaces and two office spaces. The court takes judicial notice that the debtor's disclosure statement filed on July 17, 2013, (Dkt. 317) while this case was still pending under chapter 11, stated that he purchased the Real Property in 2000 at a time when his business was going well and that he had 10 employees working in the Real Property (Dkt. 317 at 4). The table of projected income and expenses for the period of his proposed chapter 11 plan on page 42 of the disclosure statement indicated that the debtor intended to fund his plan from rental income from four business (Birkenstock, EFP, CA Wine Cocktail Co., and Midtown Mail & Print) plus an "office share" for the space he occupied in the Real Property (Dkt. 317 at 42). The movant alleges without dispute that the debtor has stated that he is married, that his wife lives in Thailand and that he intends to start a family soon. Debtor's Schedule J filed on June 13, 2013, state that he "anticipates having kids in the near future so he will be traveling [to Thailand] to stay with his family periodically. Rent expenses are low because Debtor travels a lot so when he is in town he just stays in his office on the commercial building." (Dkt. 272 at 1). In his declaration in support of his opposition to the motion, the debtor states that he has resided at the Real Property since the date of the filing of the petition, that all of his personal belongings are housed there and that he sleeps at and eats meals in the Real Property.

"Pursuant to California law, the factors a court should consider in determining residency for homestead purposes are physical occupancy of the property and the intention with which the property is occupied." In re Kelley, 300 B.R. 11, 21 (9th Cir. BAP 2003) (citing Ellsworth v. Marshall, 196 Cal.App.2d 471, 474 (1961)). With respect to property which has multiple uses, "if a building is the actual bona fide residence of a party, he may legally select it and the land on which it is situated as a homestead, even though, incidentally, a part thereof, no matter how large, may be used by him for purposes other than those of family residence." Coca Cola Bottling Co. v. Feliciano, 45 Cal.App.2d 680, 683-84 (1941). In this case the court finds, based on the evidence in the record of which the court takes judicial notice that although the debtor may have physically occupied the Real Property, his intentions with respect to the Real Property were not to treat it as his residence for the purposes of the homestead exemption, but instead was to treat it as a temporary living space that the debtor could use while he attempted to reorganize, which reorganization included returning the office space in which he was sleeping to use as an office. Therefore, the claim of exemption in the Real Property is disallowed.

As for the debtor's exemption of his wife's wedding ring, the claim of exemption is disallowed because the debtor can only exempt property of the estate. The debtor's amended Schedule C states that the debtor purchased the ring "in the beginning of 2012," prior to his marriage to his wife. "It is well established that, if a husband conveys to his wife his separate or community property, there mere fact of the conveyance

itself will raise the prima facie presumption that he intended the conveyance to be a gift." Dunn v. Mullan, 211 Cal. 583, 589-90 (1931). The wedding ring, purchased with the debtor's separate funds and conveyed to his wife was presumptively a gift intended by the debtor to be his wife's separate property. The debtor has presented no evidence to rebut the presumption. Accordingly, the ring was not property of the estate on the date of the filing of the petition and cannot be exempted.

As for the debtor's exemption of a civil lawsuit against Savannah McCall, Cal. Civ. Proc. Code § 704.140 allows for exemption of "a cause of action for personal injury" (§ 704.140(a)) and "an award of damages or a settlement arising out of personal injury" (§ 704.140(b)). However, as stated by the court in In re Altmiller-Rubio, 2011 WL 10639468 (Bankr. E.D. Cal. 2011), "CCP § 704.140(a) & (b) are not mutually exclusive. CCP 704.140(a) does not allow for the exception of an unliquidated personal injury claim in its entirety. Once the P.I. Claim was settled and reduced to cash proceeds, the nature of the 'exempt' property shifted from the unliquidated claim to the cash proceeds themselves. The exemption right remains unchanged, but the analysis shifted from CCP § 704.140(a) to the 'necessary for support' inquiry under § 704.140(b). Gose v. McGranahan (In re Gose), 308 B.R. 41, 48 (9th Cir. BAP2004)." The amended Schedule C does not state whether the debtor claims the lawsuit as exempt under § 703.140(a) or (b), but to the extent the debtor seeks to exempt all proceeds arising from the civil lawsuit, the claim of exemption is disallowed because the debtor has not shown that the proceeds are necessary for his support. As pointed out by the movant, none of the copies of Schedules I and J, nor any of the tables of projected income and expenses filed by the debtor in this case list anticipated proceeds from the lawsuit as income for the debtor. That is sufficient to rebut the presumption that the claim of exemption is valid. The burden having shifted to the debtor, he has presented no evidence showing that damages or settlement proceeds which may arise out of the lawsuit are necessary for his support.

Finally, as to the movant's argument that the debtor's exemptions should be surcharged, the objection is overruled because the movant engages in no analysis of the single case it cites regarding a debtor's bad faith conduct and the effect on the debtor's claimed exemptions, In re Nicholson, 425 B.R. 622 (9th Cir. BAP 2010). Furthermore, the movant's argument presupposes, without any further analysis, that the dowry paid by the debtor to his wife's family is an avoidable transfer when this court has made no such finding. The court will not surcharge the debtor's exemptions on that basis.

The court will issue a minute order.

19. [13-25108](#)-B-7 DEBRA LOCKHART MOTION TO REDEEM PROPERTY
7-12-13 [[59](#)]

Tentative Ruling: The motion is denied without prejudice.

By this motion the debtor seeks to redeem personal property consisting of a 2003 Hyundai Santa Fe from secured creditor Car Cage Motors, Inc. The motion is denied without prejudice because the debtor seeks relief that is not permitted by the Bankruptcy Code. Redemption of tangible personal property is governed by 11 U.S.C. § 722. That section allows a debtor to

redeem property by paying the holder of a lien in the property the amount of the allowed secured claim of the lien holder "in full at the time of redemption." In this case, the debtor requests that she be allowed to pay \$800.00 of her proposed redemption value within 30 days of the time this motion is granted, and that she be allowed to pay the balance of the redemption value over 16 months. The statute does not allow that, and the debtor has presented no evidence of her ability to pay the redemption value in full at the time of redemption.

The court will issue a minute order.

20. [11-46760](#)-B-7 BRIAN/RANDI THIEL MOTION TO COMPEL
[12-2018](#) DB-2 8-5-13 [[99](#)]
FARM CREDIT WEST, PCA V. THIEL
ET AL

Tentative Ruling: The motion is granted in part. The plaintiff's request for an order compelling production of documents is granted. On or before August 30, 2013, the defendants shall serve on the plaintiff the documents described in the Requests for Production of Documents filed as Exhibits "C," "D" and "E" to the motion that are in the defendants' possession, custody or control. The plaintiff's request for an extension of the date for the close of non-expert discovery is denied without prejudice. The court awards no fees or expenses pursuant to Fed. R. Civ. P. 37(a)(5). Except as so ordered, the motion is denied.

The court finds pursuant to Fed. R. Bankr. P. 7037(a)(1) that the movant has in good faith conferred with the defendants in an effort to obtain the documents requested of the defendants without court order.

As for the plaintiff's request that the deadline for the close of non-expert discovery be extended to October 15, 2013, the request is denied without prejudice. The court issued a Scheduling Order in this adversary proceeding on July 11, 2012 (Dkt. 41). The Scheduling Order allows motions to compel discovery and motions for protective orders to be heard on shortened notice; it does not allow a motion for all other relief that the moving party believes is related or implicated.

Furthermore, the Scheduling Order states on page 11 that requests for relief from or modification of the scheduling order "are not favored and will ordinarily be denied unless the requesting party makes a strong showing of diligence in complying" with the Scheduling Order. The plaintiff has not made such a showing. In its order denying the plaintiff's emergency ex parte application for an order shortening time to have the instant motion heard on August 6, 2013, the court stated that it was questionable whether the plaintiff had shown good cause for an order shortening time, in light of the fact that plaintiff first propounded requests for production on the defendants 59 days before the close of discovery, and then waited until 18 days after responses were due and only 11 days before the close of non-expert discovery at the time to file a motion to compel and a request for shortened time. The foregoing facts do not suggest a strong showing of diligence in complying with the terms of the Scheduling Order.

To the extent the plaintiff requests an award of attorney's fees pursuant to Fed. R. Civ. P. 37(a)(5), made applicable to this matter by Fed. R.

Bankr. P. 7037, the request is denied. Rule 37(a)(5)(A) requires that such fees be reasonable. In this case, the only evidence of attorney's fees incurred by the movant in connection with this motion is contained in the supporting declaration of Jamie Dreher, (Dkt. 101) in which he states that "[t]o date, Farm Credit's fees and expenses in preparation of Farm Credit's motions to compel against Debtors are approximately \$3,606.00." That is insufficient to allow the court to assess the reasonableness of the fees, as there is no detail of the fees incurred as evidenced by time sheets or billing records.

The court will issue a minute order.

21. [13-24145](#)-B-7 THE CALIFORNIA MOTION TO COMPROMISE
DMW-1 HOSPITALIST PHYSICIANS, CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INSURANCE
COMPANY
7-23-13 [[23](#)]

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

The motion is granted, and the debtors are authorized to enter into and perform in accordance with the Settlement Agreement and Mutual General Release filed as an exhibit to the motion (Dkt. 33). 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 trustee alleges without dispute the compromise is fair and equitable. The court finds that the compromise 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 his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

22. [12-39375](#)-B-7 BRIAN/ANNETTE NOBLE CONTINUED AMENDED MOTION TO
JRR-1 SELL
6-13-13 [[32](#)]

Tentative Ruling: This matter continued from July 23, 2013 to allow the chapter 7 trustee time to obtain consent to the proposed sale from the secured creditor(s). No proof of consent has been filed. The motion is dismissed without prejudice.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 3545 Dorena Place, West Sacramento, California (APN: 072-223-003-000) ("Property") to IH2 PROPERTY WEST, L.P. for \$305,000.00. In this case, Bank of America, N.A. ("BofA") holds a senior lien against the Property. The Bank of New York Mellon and GE Money Bank each hold a junior lien against the Property. Pursuant to the motion, the trustee proposes to pay BofA \$240,835.75 in full satisfaction of its claim and to pay each junior lienholder \$6,000.00 in full satisfaction of their claims. According to a filed proof of claim by Real Time Resolutions, Inc. as agent for BAC fka Countrywide, (Claim no. 3 on the court's claims registry), there is a claim for a junior lien against the Property for \$61,885.04. Additionally, per Schedule D, BofA has a claim for \$514,344.00 as to its senior lien against the Property, and \$59,9444.00 as to a junior lien against the Property (Dkt. 1 at 16). The trustee has not provided proof that any of these lienholders consent to the proposed sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

23. [12-40252](#)-B-7 SCOTT CASTANEDA MOTION TO AVOID LIEN OF TAMERA CASTANEDA
7-5-13 [[64](#)]

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.

24. [12-40252](#)-B-7 SCOTT CASTANEDA MOTION TO REQUEST REFERRAL TO
CA-1 U.S. TRUSTEE TO MAKE AN INQUIRY
INTO POTENTIAL DISABLED ABUSE,
ELDER ABUSE AND FRAUD
8-6-13 [[74](#)]

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. Debtor's request that the court "sua sponte" issue sanctions against Movant under Fed. R. Bankr. P. 9011(b) is denied.

The motion is denied without prejudice because it fails to cite legal

authority for the relief it seeks [LBR 9014-1(d)(5)] and analyze the facts of the case within the context of that legal authority. Here, Movant, a creditor of Debtor, seeks to have the court "refer" this case to the U.S. Trustee in order for investigation as to various types of abuse and fraud. Movant cites to 11 U.S.C. § 704(a)(7) and § 548(a) in support; however, neither of these sections permits this court to grant the relief Movant seeks.

The court notes that according to the U.S. Department of Justice's Private Trustee Chapter 7 Handbook and statutory authority, chapter 7 trustees as well as U.S. trustees have certain reporting duties as to potential bankruptcy crimes. See 18 U.S.C. § 3057 and 28 U.S.C. § 586.

Debtor's request for sanctions under Fed. R. Bankr. P. 9011(b) is denied without prejudice because it is procedurally improper. The term "sua sponte" refers to a decision made by the court's own initiative - not by motion. The court construes this as a request for sanctions by motion. A motion for sanctions for violation of Fed. R. Bankr. P. 9011(b) must comply with subsection (c)(1)(A). Debtor cannot circumvent the foregoing requirement by asking the court to impose sanctions "sua sponte."

The court will issue a minute order.

25. [12-35371](#)-B-7 PAVEL KUZMENKO
JRR-1

CONTINUED MOTION TO SELL
6-18-13 [[22](#)]

Tentative Ruling: This matter continued from July 23, 2013 to allow the chapter 7 trustee time to obtain consent to the proposed sale from the secured creditor(s). No proof of consent has been filed. The motion is dismissed without prejudice.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 9028 Allbritton Way, Elk Grove, California (APN: 119-1900-046-0000) ("Property") to Anoop Kaur and Navneet Virk for \$207,000.00. In this case, Bank of America, N.A. ("BofA") holds a senior lien against the Property. Pursuant to the motion, the trustee proposes to pay BofA \$189,913.78 in full satisfaction of its claim. According to Schedule D, BofA has a claim for \$221,000.00 (Dkt. 1 at 24). The trustee has not provided proof that BofA consents to the proposed sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

26. [12-33980](#)-B-7 LARRY WALLER
HSM-6

MOTION FOR ORDER APPROVING
STIPULATION AND EXTENDING TIME
TO FILE A COMPLAINT OBJECTING
TO DISCHARGE AND/OR SEEKING A
DETERMINATION OF
NON-DISCHARGEABILITY OF A
PARTICULAR DEBT
7-23-13 [[77](#)]

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

The motion is granted. The stipulation between the debtor and the chapter 7 trustee (Dkt. 80) is approved. Pursuant to the approved stipulation, the deadline for the chapter 7 trustee to file an objection to the debtor's discharge under 11 U.S.C. § 727 or challenge the dischargeability of certain debts under 11 U.S.C. § 523 is extended to September 27, 2013.

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 or challenge the dischargeability of certain debts under 11 U.S.C. § 523. When a request for an enlargement of time to file a complaint to objecting to discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the chapter 7 trustee alleges that it needs additional time to investigate certain pre-petition transactions as well as continue settlement talks with the debtor. This constitutes "cause" for purposes of Fed. R. Bankr. P. 4004(b) and 4007(c). The debtor, through his counsel, and the chapter 7 trustee have entered into a stipulation to extend the deadline (Dkt. 80).

The court will issue a minute order.

27. [12-37383](#)-B-7 MICHELLE/TREVOR
JRR-1 STROSNIDER

CONTINUED MOTION TO SELL
6-18-13 [[33](#)]

Tentative Ruling: This matter continued from July 23, 2013 to allow the chapter 7 trustee time to obtain consent to the proposed sale from the secured creditor(s). No proof of consent has been filed. The motion is dismissed without prejudice.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 6144 Glenhurst Way, Citrus Heights, California (APN: 209-0543-003-0000) ("Property") in an "as-is" and "where-is" condition to Richard Kham for \$145,000.00 cash. In this case, Wells Fargo Bank, N.A. ("Wells Fargo"), holds a senior lien against the Property. Pursuant to the motion, the trustee proposes to pay Wells Fargo \$107,234.34 in full satisfaction of its claim. However, Wells Fargo filed a "conditional non-opposition" that the court construes as opposing the trustee's proposal.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which all lienholders agree, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

28. [11-37885](#)-B-7 MERLE HOWARD
SSA-6

MOTION TO SELL
6-26-13 [[79](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the real property located at 1337 E. Acacia Street, Stockton, CA 92505 (APN: 151-043-15) (the "Property") in an "as-is" and "where-is" condition to Delia Molloy (the "Buyer") for \$48,500.00 cash on the terms set forth in the Residential Purchase Agreement and Joint Escrow Instructions filed with the motion (Dkt. 82 at p. 3). The proceeds of the sale payable to the estate shall be administered for the benefit of the estate. The trustee is authorized to pay \$1,697.50 of the sales price to Bob Brazeal and \$1,212.50 of the sale price to Buyer, real estate agents for the estate and the Buyer, representing a commission of six percent, as a chapter 7 administrative expense. 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 chapter 7 trustee's request for a good faith finding under 11 U.S.C. § 363(m) is denied without prejudice because proof of the buyer's good faith must come from the buyer. Such proof must include, at a minimum, the purchaser's declaration under penalty of perjury regarding the following: (1) the purchaser's relationships, if any, with the debtor, the trustee and any other actual or potential bidders; (2) the purchaser's agreements or understandings, if any, with the debtor, the trustee and any other actual or potential bidders regarding participation in the sale or the manner of participation in the sale; and (3) the purchaser's knowledge, if any, of any improper intended use of the proceeds of sale [In re EDC Holding Co., 676 F.2d 945 (7th Cir. 1982)].

The court finds that the approved commission to be paid to Bob Brazeal and Buyer is reasonable compensation for actual, necessary and beneficial services.

The 14-day stay under Fed. R. Bankr. P. 6004(h) is waived.

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

29. [09-24885](#)-B-13 JAMES/HEATHER MORRIS
[12-2674](#) DBJ-2
MORRIS ET AL V. BANK OF
AMERICA N.A.

MOTION FOR RELIEF FROM DEFAULT
JUDGMENT
7-11-13 [[39](#)]

Tentative Ruling: The motion is denied.

Through this motion, Debtors, joined with Defendant Bank of America, N.A. ("BofA"), seek to vacate the order of default judgment, entered April 10, 2013, pursuant Fed. R. Civ. P. 60(b)(1) ("mistake, inadvertence, surprise, or excusable neglect"), made applicable to this proceeding by Fed. R. Bankr. P. 9024.

A determination under Fed. R. Civ. P. 60(b)(1) is fact specific. "What is or is not sufficient to justify relief under Rule 60(b)(1) is best understood by analyzing the fact patterns, rather than the language, of the cases." Joseph T. McLaughlin, 12 Moore's Federal Practice, § 60.41[1][a] (Matthew Bender 3d Ed.).

The court notes the following time line of events. According to the complaint, on August 15, 2012, counsel for the debtors notified BofA that the debtors' case was paid in full and set to be discharged, which included the claim of BofA. The complaint, an action for reconveyance of a second deed of trust, was filed on November 21, 2012 (Dkt. 1). According to the moving papers, unbeknownst to Debtors' counsel, BofA reconveyed the deed of trust on November 26, 2012. BofA was served with the complaint on November 27, 2012 (Dkt. 7 and 8). A request for entry of default was filed on January 24, 2013 (Dkt. 10), and default entered on January 25, 2013. A motion for entry of default judgment was filed on January 30, 2013 (Dkt. 15), and granted, in part, by order entered on April 10, 2013 (Dkt. 27). Counsel for the debtors learned of the reconveyance from BofA on April 29, 2013. Debtors filed a prior motion to vacate default judgment on April 30, 2013, but it was denied without prejudice by order entered on June 24, 2013 (Dkt. 38). In the prior motion, Debtors requested that default judgment be vacated on the grounds that the parties had reached a settlement with BofA after default judgment had been entered. Now, Debtors and BofA request that default judgment be vacated on the grounds that Debtors filed their complaint on the mistaken belief that it was not moot, having been unaware that the deed of trust had already been reconveyed.

In light of the events above, Debtors and BofA have failed to meet their burden under Fed. R. Civ. P. 60(b)(1). BofA was aware of its claim being discharged in Debtors' bankruptcy as far back as August of 2012. However, BofA did nothing for nearly four months to reconvey the deed of trust. BofA could have filed a response to the complaint or contacted Debtors' counsel to inform him that the deed had been reconveyed. Yet, none of that occurred and neither the debtors nor BofA have provided the court with a reason as to why this should be considered excusable neglect. Moreover, the parties have failed to show how BofA's failure to reconvey or communicate with debtors' counsel as to the reconveyance amounts to a mistake on the debtors' part.

The mere fact that both parties want the judgment vacated is not enough. In the ruling from June 18, 2013 (order denying Debtors' prior motion to vacate default judgment), this court quoted the following:

Parties do not have an absolute right to vacate a prior order in a settlement. See Jewelers Vigilance Committee, Inc. v. Vitale, Inc., 177 F.R.D. 184 (S.D.N.Y. 1998), citing In re Memorial Hospital of Iowa County, Inc., 862 F.2d 1299, 1302 (7th Cir.1988) ("[w]hen a clash between genuine adversaries produces a precedent, ... the judicial system ought not allow the social value of that precedent, created at cost to the public and other litigants, to be a bargaining chip in the process of settlement. The precedent, a public act of a public official, is not the parties' property.") and U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 29, 115 S.Ct. 386, 392, 130 L.Ed.2d 233 (1994) (vacatur in such circumstances [settlement] is justified only upon "exceptional circumstances," which "do not include the mere fact that the settlement agreement provides for vacatur.")

Those principles are still applicable. There is no showing of "exceptional circumstances."

The court will issue a minute order.

30. [13-21096](#)-B-7 STEPHEN/DELIA INGERSOLL CONTINUED MOTION TO SELL
JRR-1 6-18-13 [[26](#)]

Tentative Ruling: This matter continued from July 23, 2013 to allow the chapter 7 trustee time to obtain consent to the proposed sale from the secured creditor(s). No proof of consent has been filed. The motion is dismissed without prejudice.

The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 4900 Golden Street Pollock Pines, California (APN: 042-311-13-10) ("Property") to Wynn Real Estate Brokerage, Inc. for \$110,000.00. In this case, The Golden 1 Credit Union ("GU") holds a senior lien against the Property and Bank of America, N.A. ("BofA") holds a junior lien. Pursuant to the motion, the trustee proposes to pay GU \$95,221.50 in full satisfaction of its claim and to pay BofA \$6,000.00 in full satisfaction of its claim. According to Schedule D, GU has a claim for \$222,263.96 and BofA has a claim for \$9,810.29 (Dkt. 12 at 10). The trustee has not provided proof that either lienholder consents to the proposed sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court will issue a minute order.

31. [12-38199](#)-B-7 STEVE GREGORY MOTION FOR ENTRY OF DEFAULT
[13-2022](#) CLG-2 JUDGMENT
GREGORY V. GREGORY 7-10-13 [[31](#)]

Tentative Ruling: The motion is denied without prejudice.

Plaintiff has failed to provide any support, *e.g.*, an affidavit, with the request for entry of default judgment as to why the court should grant the relief Plaintiff seeks. In the complaint, Plaintiff prays that her claim of \$75,000.00 plus late fees, interest, and attorney's fees and costs, be determined to be non-dischargeable under 11 U.S.C. § 523, as well as for compensatory and punitive damages according to proof, and reasonable attorney's fees and costs (Dkt. 1). However, Plaintiff has provided the court with nothing to support why she is entitled to default judgment as to the relief she seeks. See Fed. R. Bankr. P. 7055, applying Fed. R. Civ. P. 55.

A "prove up" hearing is held only if the court determines that one is required after consideration of a proper motion.

The court will issue a minute order.

32. [11-32429](#)-B-7 CEDAR VALLEY CONCRETE, MOTION FOR COMPENSATION FOR
FRL-1 INC., A CALIFORNIA GONZALES AND SISTO, LLP,
ACCOUNTANT(S), FEE: \$2,666.60,
EXPENSES: \$0.00.
7-19-13 [[202](#)]

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

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$2,666.60 in fees and \$0.00 in expenses, for a total of \$2,666.60, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on February 10, 2012 (Dkt. 95), the court authorized the debtor to retain the applicant as accounting firm for the trustee in this case, with an effective date of employment of January 27, 2012. 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). The court notes that the applicant's billing statements include two charges for work performed on January 24, 2012, totaling \$186.00, prior to the effective date of employment. However, the court construes the present application as requesting an effective date in the order approving the applicant's employment retroactive to January 24, 2012. 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 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). Here, the employment application was filed on

January 29, 2012, and January 24, 2012, is five (5) days prior to the filing date of the employment application.

Applicant seeks compensation for services rendered and costs incurred during the period January 24, 2012 through June 26, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The trustee shall submit a proposed amended form of employment order that is consistent with the foregoing ruling. After entry of the amended employment order, the court will issue a minute order granting the motion for approval of compensation.

33. [12-29818](#)-B-7 MARVIN/MARY IVIE MOTION FOR COMPENSATION BY THE
DNL-5 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S), FEE: \$8,663.50,
EXPENSES: \$171.10
7-19-13 [[67](#)]

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

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$8,663.50 in fees and \$171.10 in expenses, for a total of \$8,834.60, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On May 22, 2012, the debtor filed a chapter 7 petition. By order entered on August 6, 2012 (Dkt. 26) (the "Order"), the court authorized the chapter 7 trustee to retain applicant as counsel for the chapter 7 trustee in this case. Applicant now seeks compensation for services rendered and costs incurred during the period June 29, 2012 through July 8, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

34. [13-23398](#)-B-7 LEONARD/ROSA CIRAULO MOTION TO SELL
DNL-6 7-30-13 [[73](#)]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell real property located at 512 Elizabeth St., Vacaville, CA 95688 ("Property") in an "as-is" and "where-is" condition to John Mendonsa and Ann Mendonsa for \$475,000.00. 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. The application for real estate broker's commissions is approved on a final basis in the amount of \$28,500.00, payable as a

chapter 7 administrative expense. Except as so ordered, the motion is denied.

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

On March 13, 2013, the debtor filed a chapter 7 petition. By order entered on May 23, 2013 (Dkt. 39) (the "Order"), the court authorized the trustee to retain Coldwell Banker Real Estate ("Coldwell") as real estate broker for chapter 7 trustee in this case. Coldwell is to receive 6% of the sales price of the Property. Coldwell now seeks compensation for commissions earned from the sale. As set forth in the application, the approved commissions are reasonable compensation for actual, necessary and beneficial services.

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 trustee shall submit an order that conforms to the foregoing ruling.

35. [13-27963](#)-B-7 MARGARITO/AGUSTINA LUNA MOTION TO AVOID LIEN OF CAPITAL
RPH-1 ONE BANK (USA), N.A.
7-18-13 [[18](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial liens in favor of Capital One Bank (USA), N.A., recorded in the official records of El Dorado County, Document Nos. 2011-0048613 (\$3,829.92) and 2013-0008779 (\$2,414.06), are avoided as against the real property located at 1149 Carson Avenue, South lake Tahoe, CA.

The subject real property has a value of \$165,000.00 as of the date of the petition. There are no unavoidable liens on the real property. The debtors claimed the property as entirely exempt under California Code of Civil Procedure Section 704.730(a)(3), under which they exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

36. [12-36965](#)-B-7 JOHN/MARCIA RUSSELL
DNL-5

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOHN JOSEPH
RUSSELL AND MARCIA LYNN RUSSELL
7-23-13 [[67](#)]

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

The motion is granted. The chapter 7 trustee is authorized to enter into and perform in accordance with the terms of the Settlement Agreement filed as exhibit "B" to the motion (Dkt. 70 at 18). 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 trustee alleges without dispute the compromise is fair and equitable. The court finds that the compromise is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). The compromise will spare the estate the time and expense of complex litigation over claims on which the trustee has an uncertain chance of prevailing. Accordingly, the court finds that the trustee has carried her burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

37. [13-29538](#)-B-7 ANGELICA SOTO
JDP-1

MOTION TO COMPEL ABANDONMENT
7-29-13 [[10](#)]

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.

38. [13-26640](#)-B-7 DONNA/HARVEY BILLS
HSM-2

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR
OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
7-17-13 [[25](#)]

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 August 19, 2013, the court approved the Stipulation to Order Extending Time to File

Objections, etc. between the debtors and the chapter 7 trustee and filed on August 16, 2013 (Dkt. 39). The approved stipulation resolves this motion.

39. [13-30014](#)-B-7 DONIEL FLORES MOTION TO COMPEL ABANDONMENT
SNM-1 8-2-13 [[11](#)]

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.

40. [13-25888](#)-B-7 KATHLEEN CANNON MOTION TO AVOID LIEN OF
RAC-1 CITIBANK (SOUTH DAKOTA), N.A.
7-10-13 [[14](#)]

Tentative Ruling: This matter is continued to October 1, 2013 at 9:32 a.m. to be heard after the evidentiary hearing on the motion to avoid the lien of Persolve, LLC (D.C.N. RAC-5).

41. [13-25888](#)-B-7 KATHLEEN CANNON MOTION TO AVOID LIEN OF
RAC-2 AMERICAN EXPRESS CENTURION BANK
7-10-13 [[19](#)]

Tentative Ruling: This matter is continued to October 1, 2013 at 9:32 a.m. to be heard after the evidentiary hearing on the motion to avoid the lien of Persolve, LLC (D.C.N. RAC-5).

42. [13-25888](#)-B-7 KATHLEEN CANNON MOTION TO AVOID LIEN OF
RAC-3 WORLDWIDE ASSET PURCHASING, LLC
7-10-13 [[26](#)]

Tentative Ruling: This matter is continued to October 1, 2013 at 9:32 a.m. to be heard after the evidentiary hearing on the motion to avoid the lien of Persolve, LLC (D.C.N. RAC-5).

43. [13-25888](#)-B-7 KATHLEEN CANNON MOTION TO AVOID LIEN OF
RAC-4 NATIONAL CREDIT ACCEPTANCE,
INC.
7-11-13 [[31](#)]

Tentative Ruling: This matter is continued to October 1, 2013 at 9:32 a.m. to be heard after the evidentiary hearing on the motion to avoid the lien of Persolve, LLC (D.C.N. RAC-5).

44. [13-25888](#)-B-7 KATHLEEN CANNON
RAC-5

MOTION TO AVOID LIEN OF
PERSOLVE, LLC
7-11-13 [[36](#)]

Tentative Ruling: The objection Debtor's Motion to Avoid Lien of Persolve, LLC, is continued to a final evidentiary hearing on September 23, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32 to determine whether Debtor has properly claimed a homestead exemption.

On or before September 16, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before September 16, 2013, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Objection to Debtor's Motion to Avoid Lien of Persolve, LLC. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

45. [13-25888](#)-B-7 KATHLEEN CANNON
RAC-6

MOTION TO AVOID LIEN OF TARGET
NATIONAL BANK
7-11-13 [[41](#)]

Tentative Ruling: This matter is continued to October 1, 2013 at 9:32 a.m. to be heard after the evidentiary hearing on the motion to avoid the lien of Persolve, LLC (D.C.N. RAC-5).

46. [10-45393](#)-B-7 RACHEL BIRNBAUM
SJS-10

MOTION TO COMPEL ABANDONMENT
7-19-13 [[423](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in real property located at 1217 Maple Avenue, Vallejo, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the value of the Property is \$100,000.00 and that the Property is encumbered by secured debt totaling \$117,000.00. The debtor has shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

47. [10-45393](#)-B-7 RACHEL BIRNBAUM
SJS-11

MOTION TO COMPEL ABANDONMENT
7-19-13 [[429](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in real property located at 713 Sutter Street, Vallejo, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the value of the Property is \$260,000.00 and that the Property is encumbered by secured debt totaling \$550,000.00. The debtor has shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

48. [10-45393](#)-B-7 RACHEL BIRNBAUM
SJS-12

MOTION TO COMPEL ABANDONMENT
7-19-13 [[435](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in real property located at 460 East L Street, Benicia, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the value of the Property is \$127,355.50 and that the Property is encumbered by secured debt totaling \$400,696.39. The debtor has shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

49. [10-45393](#)-B-7 RACHEL BIRNBAUM
SJS-8

MOTION TO COMPEL ABANDONMENT
7-19-13 [[411](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in real property located at 428 Mills Drive, Benicia, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the value of the Property is \$404,500.00 and that the Property is encumbered by secured debt totaling \$525,116.86. The debtor has shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

50. [10-45393](#)-B-7 RACHEL BIRNBAUM
SJS-9

MOTION TO COMPEL ABANDONMENT
7-19-13 [[417](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in real property located at 1241 Maple Avenue, Vallejo, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the value of the Property is \$135,000.00 and that the Property is encumbered by secured debt totaling \$181,667.51. The debtor has shown that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

51. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC
FWP-77

OBJECTION TO CLAIM OF CYNTHIA
ANN MCDANIEL, CLAIM NUMBER 394
7-2-13 [[1889](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues the following abbreviated tentative ruling.

The debtor's objection is overruled without prejudice.

The debtor disputes the validity and nature of claim no. 394, filed by Cynthia Ann McDaniel (the "Claimant") on February 4, 2013 (the "Claim"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v.

Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Contrary to the debtor's belief, the Claim was properly completed and filed. Fed. R. Bankr. P. 3001(f). When an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Here, the debtor has not expressly denied the existence of the Claim, rather, the debtor's main objection to the Claim is based on statements such as: "The Debtor objects to the Claim because the Claim is in an unliquidated amount, for an unspecified "personal injury," and Claimant has attached no documentation to support the Claim." Essentially, the debtor's objection is based on inadequate documentation provided for in the Claim. However, objections to properly filed claims based on "inadequate documentation" are insufficient standing alone to overcome the effect of Fed. R. Bankr. P. 3001(f). In re Heath, 331 B.R. 424 (9th Cir. BAP 2005); In re Campbell-Millman, 336 B.R. 430 (9th Cir. BAP 2005). Accordingly, the debtor's objection is overruled without prejudice.

As to the debtor's implied argument that the review of the debtor's books and records do not reflect a debt owed to the Claimant, the only evidence in support of that argument is the Jennifer Byrne's (managing director for FTI Consulting) declaration. Ms. Bryne's declaration, however, is not admissible evidence which overcomes the prima facie validity of the Claim. Ms. Bryne merely states that she is "familiar with the Debtor's day-to-day operations, business records and business affairs" and based on [her] experience and knowledge with respect to the Debtor's operations, financial condition and related business issues," she "believes nothing is owed to the Claimant." However, Ms. Bryne has not presented any admissible evidence under Federal Rule of Evidence ("FRE") 803(6) or (7), properly authenticated business records of the debtor, establishing that those records would include an entry or entries showing liability to the Claimant or shown that those records do not contain such entries. While inadmissible evidence can be admitted where there is no objection, the court is not required to admit it and will not in this instance. In re Vinhnee, 336 B.R. 437 (9th Cir. BAP 2005).

As to the debtor's request pursuant to 11 U.S.C. § 502(c) that if not disallowed that the Claim be estimated in the amount of \$0.00, that request is also denied. The debtor has failed to address the standard set forth in 11 U.S.C. § 502(c)(1), that administration of the bankruptcy case will be unduly delayed if the Claim is not estimated at \$0.00. The debtor's primary contention that the Claim should be estimated at \$0.00 is based on inadequate documentation provided for in the Claim and/or the Claimant's failure to respond to the Claim. For the same reasons stated above, the debtor's arguments are insufficient to justify estimation at \$0.00. The objection does not cite, and the court is not aware of, any authority which holds that in estimating a claim with an unknown amount that the default position is to estimate at \$0.00 in the absence of evidence to the contrary.

The Bankrupt Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. Here, the debtor's objection does not state the specific information required from the Claimant to determine the validity and nature of the Claim. Accordingly, the pro se

Claimant's failure to respond to the objection with evidence supporting the Claim does not justify disallowance of the Claim.

The court will issue a minute order.

52. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF DORN'S
FWP-78 GAS, CLAIM NUMBER 307
7-2-13 [[1894](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues the following abbreviated tentative ruling.

The objection is overruled without prejudice.

The debtor seeks partial disallowance of claim number 307 in the court's claims register (the "Claim"), filed by Dorn's Gas on January 4, 2013, in the amount of \$76,467.64. The debtor seeks partial disallowance of the Claim because the Claim has been transferred to ASM Capital, L.P. on or about February 19, 2013, post-petition. However, claims are determined as of the petition date under 11 U.S.C. § 502(b). See also Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005) ("Section 502(b) sets forth the exclusive grounds for disallowance of claims..."). If the Claim has been transferred post-petition, the Claim should be provided for in the chapter 11 plan. An objection to the Claim is not the proper vehicle if the debtor is seeking to reduce the amount to be paid on the Claim based upon post-petition events. Accordingly, the debtor's objection is overruled without prejudice.

The court will issue a minute order.

53. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF ANYWAY
FWP-79 LOGISTICS, CLAIM NUMBER 378
7-2-13 [[1899](#)]

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

The debtor's objection is sustained in part, and claim No. 378 filed on January 30, 2013 by Anyway Logistics (the "Claim"), is disallowed in the amount of \$6,949.92. The remainder of the Claim is allowed as a general unsecured claim. Except as so ordered, the objection is overruled.

The debtor seeks complete disallowance of \$6,949.92 in charges stated in the Claim because the charges related to post-petition interest (the "Post-Petition Charges"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues the following abbreviated tentative ruling.

The debtor's objection is overruled without prejudice.

The debtor disputes the validity and nature of claim no. 213, filed by Martinez Leon Epifania (the "Claimant") on December 12, 2012 (the "Claim"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Contrary to the debtor's belief, the Claim was properly completed and filed. Fed. R. Bankr. P. 3001(f). When an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Here, the debtor has not expressly denied the existence of the Claim, rather, the debtor's main objection to the Claim is based on statements such as: "Claimant did not, however, attach any supporting documentation to the Claim, or provide any other information about the Claim." Essentially, the debtor's objection is based on inadequate documentation provided for in the Claim. However, objections to properly filed claims based on "inadequate documentation" are insufficient standing alone to overcome the effect of Fed. R. Bankr. P. 3001(f). In re Heath, 331 B.R. 424 (9th Cir. BAP 2005); In re Campbell-Millman, 336 B.R. 430 (9th Cir. BAP 2005). Accordingly, the debtor's objection is overruled without prejudice.

As to the debtor's implied argument that the review of the debtor's books and records do not reflect a debt owed to the Claimant, the only evidence in support of that argument is the Jennifer Byrne's (managing director for FTI Consulting) declaration. Ms. Bryne's declaration, however, is not admissible evidence which overcomes the prima facie validity of the Claim. Ms. Bryne merely states that she is "familiar with the Debtor's day-to-day operations, business records and business affairs" and based on [her] experience and knowledge with respect to the Debtor's operations, financial condition and related business issues," she "believes nothing is owed to the Claimant." However, Ms. Bryne has not presented any admissible evidence under Federal Rule of Evidence ("FRE") 803(6) or (7), properly authenticated business records of the debtor, establishing that those records would include an entry or entries showing liability to the Claimant or shown that those records do not contain such entries. While inadmissible evidence can be admitted where there is no objection, the court is not required to admit it and will not in this instance. In re Vinhnee, 336 B.R. 437 (9th Cir. BAP 2005).

As to the debtor's request pursuant to 11 U.S.C. § 502(c) that if not disallowed that the Claim be estimated in the amount of \$0.00, that

request is also denied. The debtor has failed to address the standard set forth in 11 U.S.C. § 502(c)(1), that administration of the bankruptcy case will be unduly delayed if the Claim is not estimated at \$0.00. The debtor's primary contention that the Claim should be estimated at \$0.00 is based on inadequate documentation provided for in the Claim and/or the Claimant's failure to respond to the Claim. For the same reasons stated above, the debtor's arguments are insufficient to justify estimation at \$0.00. The objection does not cite, and the court is not aware of, any authority which holds that in estimating a claim with an unknown amount that the default position is to estimate at \$0.00 in the absence of evidence to the contrary.

The Bankrupt Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. Here, the debtor's objection does not state the specific information required from the Claimant to determine the validity and nature of the Claim. Accordingly, the pro se Claimant's failure to respond to the objection with evidence supporting the Claim does not justify disallowance of the Claim.

The court will issue a minute order.

56. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC
FWP-82

OBJECTION TO CLAIM OF
CALIFORNIA IMAGING INSTITUTE,
CLAIM NUMBER 402
7-2-13 [[1914](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. This objection is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The debtor's objection is sustained in part, and claim No. 402 filed on February 5, 2013 by California Imaging Institute (the "Claim"), is disallowed in the amount of \$4,976.28. The remainder of the Claim is allowed as a general unsecured claim. Except as so ordered, the objection is overruled.

The debtor seeks complete disallowance of \$4,976.28 in charges stated in the Claim because the services were rendered post-petition (the "Post-Petition Charges"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

As to the Post-Petition Charges, the documents attached to the Claim are sufficient to rebut the prima facie evidence of the Claim. The claimant indicates that the Post-Petition Charges are based upon radiological services rendered between May 20, 2010 to January 8, 2013. The Claim includes a spreadsheet summary of the charges by date. However, claims are determined as of the petition date under 11 U.S.C. § 502(b). This

case was filed on October 8, 2012, and charges, totaling \$4,976.28, asserted in the Claim occurred post-petition. With respect to the Post-Petition Charges, the debtor has filed evidence which rebuts the prima facie validity of the Claim and which justifies disallowance of the Claim in the amount of \$4,976.28.

The court will issue a minute order.

57. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-83 OBJECTION TO CLAIM OF CALIFORNIA SELF-INSURERS' SECURITY FUND, CLAIM NUMBER 110-2 7-2-13 [[1919](#)]

Disposition Without Oral Argument: The objection is removed from the calendar.

This matter is continued to September 17, 2013 at 9:32 a.m. pursuant to the order entered August 14, 2013 (Dkt. 2078) approving the stipulation of the parties to the continuance.

58. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-84 OBJECTION TO CLAIM OF DANIEL R. SWEET DDS, CLAIM NUMBER 90 7-2-13 [[1924](#)]

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

The debtor's objection is sustained, and claim No. 90 filed on November 19, 2012 by Daniel R. Sweet, DDS, (the "Claimant") in an unknown amount (the "Claim") is disallowed.

The Claim does not state a basis for the Claimant's claim against the debtor. The debtor seeks complete disallowance of the Claim.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the Claim is not entitled to prima facie validity. By failing to state a basis for the claim against the debtor, the Claim is not completed in a form which substantially conforms to the Official Form B10 which constitutes proof of a claim in bankruptcy cases, as required by Fed. R. Bankr. P. 3001(a). Therefore, the Claim is not prima facie valid.

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankrupt

here. The Claim merely states the identity of the Claimant. It does not state a basis for the claim or an amount owed. In this instance the Claimant's failure to respond to the objection with evidence supporting the Claim justifies disallowance.

The court will issue a minute order.

60. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF JOSEPH
FWP-86 REINHARDT, CLAIM NUMBER 399
7-2-13 [[1934](#)]

Disposition Without Oral Argument: The objection is removed from the calendar.

An order was entered on August 2, 2013 (Dkt. 2024) vacating the hearing on this matter.

61. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC OBJECTION TO CLAIM OF UNISOURCE
FWP-87 WORLDWIDE, CLAIM NUMBER 51
7-2-13 [[1939](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. This objection is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The debtor's objection is sustained, and claim No. 51 filed on November 5, 2012 by Unisource Worldwide for \$182,369.08 (the "Claim") is disallowed in the amount of \$25,086.00.

The debtor seeks complete disallowance of \$25,086.00 in charges stated in the Claim because the services were rendered post-petition (the "Post-Petition Charges"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

As to the Post-Petition Charges, the documents attached to the debtor's objection are sufficient to rebut the prima facie evidence of the Claim. The claimant indicates that the Post-Petition Charges are based upon invoices for goods sold between August 1, 2012 and October 15, 2012. The Claim includes an invoice dated October 15, 2012 in the amount of \$25,086.00. However, claims are determined as of the petition date under 11 U.S.C. § 502(b). This case was filed on October 8, 2012, and the invoice dated October 15, 2012 shows charges that occurred post-petition. With respect to the Post-Petition Charge, the debtor has filed evidence which rebuts the prima facie validity of the Claim and which justifies disallowance of the Claim in the amount of \$25,086.00.

The court will issue a minute order.

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

The debtor's objection is sustained in part, and claim No. 162 filed on November 28, 2012 by Arturo Lopez for an unspecified amount (the "Claim") is disallowed.

The Claim does not state an amount or a valid basis for the claimant's claim against the debtor. The debtor seeks complete disallowance of the Claim.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the Claim is not entitled to prima facie validity. By failing to state an amount or a valid basis for the claim against the debtor, the Claim is not completed in a form which substantially conforms to the Official Form B10, which constitutes proof of a claim in bankruptcy cases, as required by Fed. R. Bankr. P. 3001(a). Therefore, the Claim is not prima facie valid.

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. A creditor's obligation to provide information in response to an objection is especially heightened where the claim is so lacking in supporting information that the objecting party cannot determine the basis for the claim in even the most general terms. Such is the case here. The Claim merely states the identity of the claimant. No amount or basis for the claim is given. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies complete disallowance.

The court will issue a minute order.

63. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-89 OBJECTION TO CLAIM OF UNIVERSITY OF CALIFORNIA, CLAIM NUMBER 368
7-2-13 [[1949](#)]

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

This matter is continued to September 17, 2013.

64. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-90 OBJECTION TO CLAIM OF TKJ TRUCKING, CLAIM NUMBER 257
7-2-13 [[1956](#)]

Disposition Without Oral Argument: The objection is removed from the calendar.

An order was entered on August 13, 2013 (Dkt. 2080) vacating the hearing on this matter.

65. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-91 OBJECTION TO CLAIM OF WASTE MANAGEMENT, CLAIM NUMBER 347
7-2-13 [[1961](#)]

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

This matter is continued to September 17, 2013 at 9:32 a.m., pursuant to stipulation of the parties, which was approved by court order signed August 13, 2013 (Dkt. 2079).

66. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-92 OBJECTION TO CLAIM OF APNA URGENT CARE, CLAIM NUMBER 424
7-2-13 [[1966](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues the following abbreviated tentative ruling.

The debtor's objection is sustained, and claim No. 424 filed on February 6, 2013 by Apna Urgent Care in the amount of \$17,040.00 (the "Claim") is disallowed.

The debtor disputes the validity and nature of claim No. 424, filed by Apna Urgent Care (the "Claimant") on February 6, 2013 (the "Claim"). A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Contrary to the debtor's belief, the Claim was properly completed and filed. Fed. R. Bankr. P. 3001(f). When an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Here, the debtor has not expressly denied the existence of the Claim, rather, the debtor's main objection to the Claim is based on statements such as: "The Debtor objects to the Claim because the Claimant has not attached any supporting documentation to the Claim, the Debtor did not list Claimant as a creditor in its schedules, and the Debtor believes that nothing is owed to the Claimant." Essentially, the debtor's objection is based on inadequate documentation provided for in the Claim. However, objections to properly filed claims based on "inadequate documentation" are insufficient standing alone to overcome the effect of Fed. R. Bankr. P. 3001(f). In re Heath, 331 B.R. 424 (9th Cir. BAP 2005); In re Campbell-Millman, 336 B.R. 430 (9th Cir. BAP 2005). Accordingly, the debtor's objection is overruled without prejudice.

As to the debtor's implied argument that the review of the debtor's books and records do not reflect a debt owed to the Claimant, the only evidence in support of that argument is the Jennifer Byrne's (managing director for FTI Consulting) declaration. Ms. Bryne's declaration, however, is not admissible evidence which overcomes the prima facie validity of the Claim. Ms. Bryne merely states that she is "familiar with the Debtor's day-to-day operations, business records and business affairs" and based on [her] experience and knowledge with respect to the Debtor's operations, financial condition and related business issues," she "believes that nothing is owed to the Claimant." However, Ms. Bryne has not presented any admissible evidence under Federal Rule of Evidence ("FRE") 803(6) or (7), properly authenticated business records of the debtor, establishing that those records would include an entry or entries showing liability to the Claimant or shown that those records do not contain such entries. While inadmissible evidence can be admitted where there is no objection, the court is not required to admit it and will not in this instance. In re Vinhnee, 336 B.R. 437 (9th Cir. BAP 2005).

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. Here, Debtor's objection is sufficiently specific as to the information required, *i.e.*, the medical services Claimant provided, dates as to these services, and the employees that received these services. The claimant has failed, in response to the objection, to provide information regarding the basis for the Claim. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies disallowance of the Claim.

The court will issue a minute order.

67. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC
FWP-76

OBJECTION TO CLAIM OF CONAGRA
FOODS, INC. DBA SARONI TOTAL
FOOD INGREDIENTS, CLAIM NUMBER
306
7-2-13 [[1884](#)]

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

The debtor's objection is sustained, and claim no. 306 filed on January 4, 2013 by ConAgra Foods, Inc. dba Saroni Total Food Ingredients ("ConAgra") for \$39,042.85 (the "Claim") is disallowed in the amount of \$20,322.55.

The debtor's objection shows that the priority portion of the Claim in the amount of \$20,322.55 is a duplicate of ConAgra's separately filed and allowed administrative expense claim under 11 U.S.C. § 503(b)(9) (Dkt. 551 and 586).

The court will issue a minute order.