UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 28, 2017 at 10:00 a.m.

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

2, 3, 11, 13, 15, 18, 19

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 12, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 29, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 5, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 17-24711-A-7 JOSE CARDENAS VALENZUELA — MOTION TO COMPEL ABANDONMENT
MMM-1 — 8-14-17 [15]

Tentative Ruling: The motion will be granted in part.

The debtors seeks to compel the trustee to abandon the estate's interest in his sole proprietorship construction business, Cardenas Construction.

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

According to the motion, the business assets include the business name (value unidentified), a business checking account with Bank of America (balance of $381.52), a 2015 Chevy Silverado vehicle (value of $15,000), and business tools (value of $5,000).

The motion will be denied as to the business name. The court does not see that asset on the schedules nor has it been valued.

The remaining assets have a value of $20,381.52 and have been claimed fully exempt in Schedule C. Docket 1, Schedule C. Given the exemptions, the court concludes that the business, to the extent of the assets listed in the motion (other than the business name), is of inconsequential value to the estate. The motion will be granted in part.

2. 16-21112-A-7 KENDALL BROOKS — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DNL-10 — 8-7-17 [82]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's accountant, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,762 in fees and $7.20 in expenses, for a total of $1,769.20. This motion covers the period from March 20, 2017 through August 3, 2017. The court approved the movant's employment as the estate's accountant on March 20, 2017. In performing its services, the movant charged hourly rates of $210 and $340.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for

actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included reviewing documents provided by the trustee, preparing 505(b) letters, preparing tax returns, and communicating with the trustee about tax-related issues.

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

3. 16-21112-A-7 KENDALL BROOKS — MOTION TO APPROVE ADMINISTRATIVE EXPENSES 8-7-17 [78]
DNL-9

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability as follows: $6,315 to the IRS for the 2016 tax year and $1,868 to the California Franchise Tax Board for the 2016 tax year.

11 U.S.C. § 503(b)(1)(B) provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax -- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on February 26, 2016. The tax liability in question was incurred post-petition, in 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

4. 17-22515-A-7 LANG HER — MOTION TO EXTEND DEADLINE 7-21-17 [18]
OHS-1

Tentative Ruling: The motion will be conditionally granted.

Creditor Yee Xiong moves for an extension of the deadline for filing complaints determining the dischargeability of debts pursuant to 11 U.S.C. § 523. The proposed new deadline is 21 days after entry of a judgment in an action the movant will be filing against the debtor in state court, assuming this court modifies the stay automatic stay.

The debtor was prosecuted for a July 2012 assault on the movant. The criminal case did not conclude until July 2016, when the debtor filed a state court defamation action against the movant and other defendants. The movant obtained dismissal with prejudice of that action in October 2016 and the court awarded attorney's fees and costs to the movant and her co-defendants in January 2017. The debtor filed this bankruptcy case on April 16, 2017.

Fed. R. Bankr. P. 4007(c) provides that the court may extend the deadline for filing section 523 complaints for cause. The motions must be filed before the deadlines expire.

This motion is timely. It was filed on July 21, 2017, prior to the July 25 deadline for filing section 523 complaints.

Given that the movant wishes to prosecute a civil claim against the debtor in state court and then file a complaint in this court to determine the dischargeability of any favorable state court judgment, the proposed deadline extension makes sense. The court will extend the deadline for filing section 523 complaints until 21 days after entry of a judgment against the debtor in the movant's action to be filed against the debtor.

However, as a condition to this extension, the court will require that the movant files her state court action against the debtor within 30 days after entry of the order modifying the automatic stay.

5. 16-21320-A-7 JUAN/CATHERINE MARTINEZ — MOTION TO RECONVERT CASE 7-21-17 [78]
DEF-2

Tentative Ruling: The motion will be granted.

The debtors request conversion from chapter 7 to chapter 13.

The chapter 7 trustee conditionally opposes the motion. The condition is that the debtors pay all creditors in their chapter 13 proceeding. Docket 85.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The court has reviewed the record and concludes that the debtors are not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). Specifically, the court notes that the debtors will be seeking to propose a plan to pay all their unsecured creditors in full.

The debtors have $5,669.49 in regular monthly net income. Docket 80 at 3. The income appears to be regular as it is in part retirement income and it is in part generated by employment with the County of Sacramento. Dockets 80 at 3 & 81.

And, the debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $302,361) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $23,840). Docket 80 at 5. Given the foregoing, the court concludes that the debtors are eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

6.	16-25749-A-7 DNL-2	ROBERT GARZA AND MARIA HERRERA	MOTION FOR TURNOVER OF PROPERTY 7-28-17 [59]

Tentative Ruling: The motion will be denied.

The court continued the hearing on this motion from August 14, in order for the trustee to file a reply to the debtor's counsel's August 8 opposition to the motion. No reply has been filed by the trustee.

The trustee seeks an order directing the debtor's counsel, Timothy Walsh, to turn over to her the debtor's 2016 tax refunds, totaling $3,758 (federal tax refund in the amount of $3,327 and state tax refund in the amount of $431). Mr. Walsh informed the trustee on July 25, 2017 that the debtor had used the refunds to pay him for his services.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

The motion will be denied given the opposition filed by Mr. Walsh, denying that he received any portion of the tax refunds (federal and state). Docket 80. The tax refunds were received by the debtor in February 2017. After the refunds were deposited into the debtor's bank account, the debtor made various withdrawals and card purchases totaling $1,277.37 and withdrew $2,300 in cash. The ending balance of the account as of March 8, 2017 was $1.63. Dockets 80 & 81.

It was not until approximately five months later, on July 17, 2017, that the debtor paid the $960 in question to Mr. Walsh. The debtor told Mr. Walsh that she obtained the money from her father. Docket 80 at 2, 3.

The court agrees with Mr. Walsh that the trustee has not met her burden of persuasion as to him having received any portion of the tax refunds. Given the passage of about five months between the debtor withdrawing the $2,300 and Mr. Walsh receiving the $960, given the debtor's representation to Mr. Walsh that she obtained the money from her father, and given the lack of a reply from the trustee, the motion will be denied.

7. 16-25749-A-7 DNL-3 — ROBERT GARZA AND MARIA HERRERA — MOTION FOR TURNOVER OF PROPERTY 8-2-17 [68]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests turnover of real property in Dixon, California, in order to market and sell it.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case.

Although the property was scheduled with a value of $220,000, subject to encumbrances totaling $120,000 and an exemption claim of $100,000, the trustee has recently discovered that the debtor listed the property for sale at $300,000. The trustee has learned that there has been substantial interest in the property.

However, the debtors have been uncooperative with the trustee in her attempts to gain access to the property and list it for sale herself.

Given this and despite the debtors' exemption claim, the court will order the debtors to turn over the property to the trustee. The debtors have seven days from the hearing on this motion to turn over the property to the trustee. The motion will be granted.

8. 16-25749-A-7 DNL-4 — ROBERT GARZA AND MARIA HERRERA — MOTION TO ABANDON 8-2-17 [73]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up

the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests an order abandoning the estate's interest in the debtors' dog breeding business, Garza's Bullys.

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

According to the motion, the business assets include four dogs that are on the debtors' real property, which the trustee is seeking to market and sell. As the estate does not have the funds to operate the business and the business is inherently dangerous as it involves the breeding of pit bulls, and the trustee is seeking to free the real property from the dogs so she can sell it, the business is burdensome and/or of inconsequential value to the estate. The motion will be granted.

9. 17-22851-A-7 ABDUL/TAHMINA RAUF — MOTION TO QUASH AND MODIFY SUBPOENA
CD-1 — 7-11-17 [19]

Tentative Ruling: The motion will be granted.

Petro Star Oil Co. asks the court to quash a subpoena that compels Wells Fargo Bank to produce bank records pertaining to the debtors and Petro Star. The subpoena was issued at the request of creditor Stohlman & Rogers, Inc. (dba Lakeview Petroleum Company).

The motion will be granted for several reasons.

First, Stohlman admits in its opposition to this motion that the subpoena was not issued under Fed. R. Bankr. P. 2004. It is under Fed. R. Civ. P. 45, as made applicable here by Fed. R. Bankr. P. 9016, meaning that the subpoena requires a pending adversary proceeding or contested matter.

While Stohlman says that its subpoena is related to its objection to the trustee's report of no distribution, the court is overruling that objection. The objection will not be pending after the August 28 hearing.

Second, even if the court were not overruling the objection, none of the parties to the subpoena are parties to Stohlman's objection to the trustee's report. The only party to the objection, besides Stohlman, is the trustee. On the other hand, the subpoena is seeking records from Wells Fargo Bank as pertaining to the debtors and Petro Star. Neither the debtors nor Petro Star are parties to the objection. The subpoena then is not related to an adversary proceeding or contested matter concerning the targets of the subpoena.

Third, in connection with a contested matter, the court will not permit discovery until and unless it determines that there is at the least a material disputed fact. The court is given the discretion by Fed. R. Bankr. P. 9014(c) to control the timing of discovery in connection with a contested matter.

In this case, Stohlman filed its objection to the trustee's report of no

distribution on June 18, 2017, setting it for a hearing approximately 71 days later on August 28. Dockets 16 & 17. On June 22, almost immediately upon filing the objection, Stohlman issued the subpoena. Docket 19 at 8. Stohlman did not wait for a response to the objection or for a hearing on it, and it did not wait for the court to determine whether disputed material facts exist.

Finally, the discovery Stohlman is seeking is germane to an adversary proceeding filed Stohlman objecting to the debtors' discharge. It was filed on July 31, 2017, after the objection as filed. See Adv. Proc. No. 17-2142. The issues raised by Stohlman, including the debtors' alleged concealment of assets, are now being litigated in the adversary proceeding. As such, the subpoena seems calculated to get a head start on discovery for the adversary proceeding in violation of the timing requirements of Fed. R. Civ. P 26(d)(1) & (f), as incorporated by Fed. R. Bankr. P. 7016.

Given the foregoing, the court will quash the subpoena. The motion will be granted.

10. 17-22851-A-7 ABDUL/TAHMINA RAUF — OBJECTION TO REPORT OF NO DISTRIBUTION 6-18-17 [16]
PA-1

Tentative Ruling: The objection will be overruled.

Creditor Stohlman & Rogers, Inc. (dba Lakeview Petroleum Company) objects to the trustee's May 31, 2017 report of no distribution.

The objection is timely as it was filed within the 30-day deadline prescribed by the June 1, 2017 notice of filing report of no distribution. Docket 14. This objection was filed on June 18, 2017.

The sole basis for the objection is that "the Debtors have not offered any information as to how they valued their one percent interest in [Petro Star Oil Co.]." Docket 16 at 3.

The court sees nothing in the objection specifically questioning or challenging the trustee's no asset determination. The objection merely says that the debtors have not provided information about how they valued their Petro Star interest. The objection does not say that the trustee did not receive such information. The objection seems to be stating that the debtors have not provided such information to Stohlman.

Obviously the trustee reviewed the debtors' schedules and was satisfied with the information from the debtors about their valuation of the Petro Star interest. The trustee conducted a meeting of creditors and then concluded it. While the trustee may have disagreed with the debtors' valuation of their interest in Petro Star, he determined that there are no assets, including the Petro Star interest, that can be administered for the benefit of the creditors.

The trustee's decision and bases for his decision not to administer the Petro Star interest are not challenged by the objection. There is nothing in the objection explaining where, how, or why the trustee was wrong in not administering this asset.

The court also notes that the objection is not supported by any evidence, such as a declaration establishing its factual assertions. See Local Bankruptcy Rule 9014-1(d)(7).

The court sees no basis for sustaining an objection to the trustee's report of no distribution. The objection will be overruled.

11. 16-22654-A-7 MARC LIM — MOTION TO SELL AND TO PAY 7-31-17 [189]
HSM-15

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $605,000 the estate's interest in real property in Elk Grove, California to Keesha Henry. The trustee also asks for approval of the payment of the real estate commission.

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

The property is subject to a mortgage held by Roundpoint in the approximate amount of $324,000, possible outstanding property taxes, and the debtor's exemption claim in the amount of $100,000. No tax consequences are expected from the sale. The trustee anticipates the estate to net over $130,000 from the sale.

The sale will generate significant proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

The court will also allow distribution of the debtor's exemption to the debtor's counsel to hold in trust given the debtor's death and the absence of a probate executor/administrator.

The opposition of Chick's Produce, Inc., that the debtor's heirs are not entitled to his exemption will be overruled. Rights to exemptions of property are determined as of the date the bankruptcy petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685-87 (B.A.P. 9th Cir. 2000) (citing White v. Stump, 266 U.S. 310, 313 (1924)("*When the law speaks of property which is exempt and of rights to exemptions, it, of course, refers to some point of time. In our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control, and with respect to which the status and rights of the bankrupt, the creditors, and the trustee in other particulars are fixed*"); D.A.N. Joint Venture III, L.P. v. Richey (In re Richey), Case No. 10-1306, 2011 WL 4485900 at *10 (B.A.P. 9th Cir., Aug. 8, 2011); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

The debtor was alive as of the petition date, April 26, 2016. Hence, the debtor's post-petition passing on April 1, 2017 does not deprive his heirs from his exemptions. See Docket 139 (Notice of Death of Debtor).

12. 17-23656-A-7 FRANCISCO ESQUIVIAS — MOTION TO REDEEM 7-19-17 [19]
BLG-1

Tentative Ruling: The motion will be denied without prejudice.

The debtor wishes to redeem a 2004 Chevrolet Tahoe vehicle for $1,500. The vehicle is subject to a claim held by Golden 1 Credit Union for $7,210.94.

Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The motion will be denied. First, the motion says that the vehicle "is exempt or has been abandoned." Docket 19 at 2. It does not say which one it is, exempt or abandoned. There is no evidence that the vehicle has been exempt or has been abandoned. Nor will the court speculate about this.

Second, while the motion attaches an order valuing a collateral of the same creditor in a prior bankruptcy case, the motion says nothing about the specific significance of that order. Nor does the motion say anything about the prior case or facts underlying the motion to value.

For instance, are the debtors in the prior case identical to the debtors in this case? The attached valuation order does not identify the collateral being valued either, making it impossible for the court to confirm that the valuation order pertains to the subject vehicle. The court does not have legal and factual authority to determine that the valuation order is relevant to this motion.

Third, the other evidence of value for the vehicle comes from the debtor's supporting declaration, where the debtor merely says that "[i]n my opinion the allowed secured claim of Goldenv1 [*sic*] Credit Union for purposes of redemption, is not more than $1,500.00." Docket 21 at 2.

This valuation is a far cry from the applicable valuation standard of 11 U.S.C. § 506(a)(2), "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

The court has no evidence of what a retail merchant would charge for the vehicle. The debtor is not a retail merchant or a vehicle appraiser. See Fed. R. Evid. 702 & 703. The declaration does not qualify him as anything other than a lay witness. See Fed. R. Evid. 701.

Fourth, the debtor does not say on what he bases his estimation of value for the vehicle. There is no evidence of the vehicle's condition and there is no evidence that the debtor even inspected the vehicle prior to giving his opinion of value. The debtor has not established personal knowledge as to the condition and value of the vehicle. Fed. R. Evid. 602.

In short, the debtor has not carried his burden of persuasion on establishing the value of the vehicle for purposes of redemption. The motion will be denied without prejudice.

13. 17-25258-A-7 BICH TRAN
MET-1

MOTION TO
COMPEL ABANDONMENT
8-10-17 [5]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks to compel the trustee to abandon the estate's interest in a sole proprietorship restaurant business, Pho Bac Hoa Viet Restaurant.

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

According to the motion, the business assets include:

- business license and beer and wine license
- inoperable single door freezer
- inoperable double glass door cooler
- double door stainless steel cooler
- double door stainless steel freezer
- walk-in cooler
- walk-in freezer
- meat slicer
- rice cooker
- rice warmer
- microwave
- wok
- two two-door sandwich coolers
- one-door sandwich cooler
- four-door sliding sandwich cooler
- two-drawer under-table cooler
- four high chairs
- four booster seats
- 54 chairs
- 14 tables
- two round tables
- POS cashier
- POS order
- five printers
- 12 shelving racks
- dishwasher
- serving dishes
- cutlery
- glassware

- knives
- pots and pans
- cooking utensils
- drinking fountain

The assets have a value totaling $3,500 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

14. 17-24069-A-7 BRYCE FLYNN — MOTION TO VACATE DISMISSAL
WLG-1 — 7-20-17 [15]

Tentative Ruling: The motion will be denied.

The debtor asks the court to vacate the July 10, 2017 order dismissing the case. The case was dismissed due to the debtor's failure to file Schedules A through J, the statement of financial affairs, the statement of monthly income, and the attorney's disclose statement by July 3, 2017.

The debtor filed this chapter 7 case on June 19, 2017. It was a skeletal filing. The above-enumerated documents were missing from the petition. On the same date, the court issued a notice of incomplete filing, telling the debtor about the missing documents and telling him that the case will be dismissed without further notice unless the documents are filed by July 3, the debtor files a motion for extension of the time to file the documents, or the debtor files a notice of hearing on the court's notice of intent to dismiss. Docket 3.

On June 22, the court reissued the identical notice of incomplete filing. Docket 8.

The debtor did not file the missing documents, request an extension of the time to file them, or file a notice of hearing on the court's notice of intent to dismiss. As a result, the case was dismissed on July 10. Docket 12. On July 14, after the case was dismissed, the debtor filed the missing documents. Docket 14.

The debtor has invoked Rule 60(b)(1) and (6) as bases for the requested relief.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"*(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.*"

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The motion has been filed timely. It was filed on July 20, 10 days after dismissal of the case. Docket 15.

The motion will be denied for several reasons.

First, the court does not have credible evidence that the debtor attempted to file the documents on July 3. The debtor's Exhibit 1 is not legible and the court cannot confirm that the debtor attempted to file the documents on July 3.

As to the debtor's Exhibit 2, the court cannot tell how or why the content of that exhibit amounts to a confirmation that either the documents were filed or that counsel attempted to file them. Exhibit 2 was generated by Best Case, the debtor's petition filing software. Exhibit 2 was not generated by the court. It makes no sense for the debtor to be relying on something generated by someone other than the court for confirmation that the documents were filed with the court.

Second, even assuming the court were to believe that the debtor attempted to file the documents on July 3, the court rejects the debtor's contention that the attempt to file them satisfied the deadline.

All documents are due no later than 14 days following the filing of the case. Fed. R. Bankr. P. 1007(c). The documents were not filed by that date. The contention that the debtor's counsel's attempt to file the documents on July 3 complied with the July 3 deadline is wrong.

The motion admits that one of the possible explanations for the failure to file the documents is "human error or mistake by Debtor's attorney during the filing process – maybe he did not click the final filing button or maybe he exited out of the program too early." Docket 15 at 3. "[A]t this point, there is no way to determine what actually happened." Id.

On the thing is certain, however. Counsel did not obtain confirmation from the court that the documents had been filed. It was incumbent on counsel to make sure the documents were received by the court. And, it is not difficult to do this inasmuch as counsel receives an emailed receipt confirming the filing of documents.

A proper and timely confirmation of the filing would have prevented dismissal. The court did not dismiss the case until July 10, seven days after the July 3 deadline. Counsel had a week after July 3 to make certain the documents were actually filed. He did not and there is no explanation for this failure in the record.

Third, the court also disagrees that counsel's failure to file the documents is not "the fault of the Debtor." Docket 15 at 3. The debtor's counsel is an agent of the debtor, with authority to bind the debtor in every respect within the scope of representation in the bankruptcy case. Accordingly, the neglect or mistake of counsel is the neglect or mistake of the debtor.

Fourth, as to excusable neglect, the motion makes no effort even to brief the

law, much less specifically assert excusable neglect as a basis for relief. In any event, the court is not convinced that excusable neglect present.

"*Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith].*"

Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

As mentioned above, counsel says nothing about why he did not confirm that the documents were filed after July 3. As the debtor had a week prior to dismissal to check with the court whether the documents were filed, the reason for the neglect was within the reasonable control of the debtor.

The court also disagrees that the delay will not have a negative impact on the creditors of the estate. The initial meeting of creditors was never conducted in this case and the deadline to file complaints under 11 U.S.C. §§ 523 and 727 is September 25, 2017, less than a month after the August 28 hearing on this motion. If the court were to vacate the dismissal, this would certainly prejudice the creditors as they typically have 60 days from the initial meeting of creditors to file such complaints. See Fed. R. Bankr. P. 4007(c).

Based on the totality of the circumstances, the court is not convinced that the debtor acted in good faith. Notably, bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224-25 (9th Cir. 1999) (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

In short, there is no excusable neglect warranting the vacating of the dismissal.

Finally, Rule 60(a) is also inapplicable. Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"*The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.*"

Rule 60(a) is not implicated here as the debtor has produced no evidence that the court was involved in a mistake that led to the dismissal. While the motion speculates that the court may have been involved in such a mistake, that is not evidence of the court having contributed to the dismissal of the case. The motion will be denied.

15. 17-24874-A-7 SABINA/DAVID ARACE — MOTION FOR
BPC-1 — RELIEF FROM AUTOMATIC STAY
GOLDEN 1 CREDIT UNION VS. — 8-9-17 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Golden One Credit Union, seeks retroactive and prospective relief from the automatic stay with respect to a 2008 Chevrolet Impala. The vehicle has a value of $2,000 according to Schedule A/B and its secured claim is approximately $4,742. Docket 14.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

The movant recovered possession of the vehicle on July 25, the same day the case was filed. The movant did not know of the bankruptcy petition when it repossessed the vehicle. Docket 14. The movant learned of the bankruptcy on July 27, after the vehicle had been recovered. The debtors also indicated on their statement of intention an intent to surrender the vehicle.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The court will also grant retroactive relief from stay, ratifying the repossession of the vehicle on July 25. The court will not grant retroactive relief as to other actions of the movant, if any.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

16. 17-22988-A-7 BRIAN ANDERSON — MOTION TO SELL AND TO APPROVE COMPENSATION Of REALTOR 8-7-17 [32]
SCB-3

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $223,000 the estate's interest in real property in Sacramento, California to Style Home, L.L.C. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

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

The property is subject to a mortgage held by Bank of America in the approximate amount of $89,300 and the debtor's exemption claim in the amount of $26,775. The trustee estimates that the estate will be responsible for approximately $4,460 in closing costs. No tax consequences are expected from the sale. The trustee anticipates the estate to net approximately $93,565 from the sale.

The sale will generate significant proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

17. 17-21193-A-7 WILLIAM BERNAL AND CELIA HAWKINS BERNAL — MOTION TO CONVERT CASE 7-18-17 [31]
SDB-4

Tentative Ruling: The motion will be denied without prejudice.

The debtors request conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of

the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

However, the debtors have not established that they are within the eligibility debt limits for chapter 13 relief and the motion states nothing about whether the debtors have regular income to fund a chapter 13 plan.

The debtors say only that they believe to be eligible for chapter 13 relief. Docket 33 at 2. But, this does not satisfy the standard of Marrama. The debtors have not met their burden of persuasion. Accordingly, the motion will be denied.

18. 17-24898-A-7 MICHAEL AINSLIE — MOTION FOR RELIEF FROM AUTOMATIC STAY
BPC-1
GOLDEN 1 CREDIT UNION VS. — 8-9-17 [11]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Golden One Credit Union, seeks relief from the automatic stay with respect to a 2015 Nissan NV200. The movant has produced evidence that the vehicle has a value of $19,000 and its secured claim is approximately $30,663. Docket 14.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The movant already has possession of the vehicle. The vehicle was voluntarily surrendered. Docket 14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

19. 17-24898-A-7 MICHAEL AINSLIE
VVF-1
AMERICAN HONDA FINANCE CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-10-17 [16]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2013 Honda Goldwing F6B. The movant has produced evidence that the vehicle has a value of $10,535 and its secured claim is approximately $17,704. Docket 19.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The movant already has possession of the vehicle. The vehicle was voluntarily surrendered. Docket 19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

FINAL RULINGS BEGIN HERE

20. 14-24008-A-7 CALVIN CHANG
HCS-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
7-28-17 [69]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists a total of $10,258.39, reduced from $22,200.89 ($21,942.50 in fees and $258.39 in expenses). This motion covers the period from June 7, 2011 through October 31, 2011. The court approved the movant's employment as the trustee's attorney on July 11, 2014. In performing its services, the movant charged hourly rates of $90, $175, $225, $250, $295, $325, $345.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assessing the estate's interest in a state court lawsuit (against the Regents of the University of California) the debtor lost pre-petition, (2) assessing the estate's interest in a pending appeal of the lawsuit, (3) reviewing claims encumbering the lawsuit, (4) negotiating the lawsuit's encumbrances, (5) reviewing an adversary proceeding by the Regents against the debtor, (6) negotiating with the debtor over his purchase of the lawsuit, (7) preparing a sale agreement, (8) preparing motion to sell and obtaining court approval of the sale, (9) responding to the Regents' opposition to the sale, (10) assisting the trustee with the general administration of the estate, and (11) preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

21. 17-22515-A-7 LANG HER
OHS-2
YEE XIONG VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-21-17 [22]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Yee Xiong, seeks relief from the automatic stay to file a state court action against the debtor to assert intentional tort claims. The movant's claims in state court will be prosecuted to judgment but not otherwise enforced. The movant intends to return to this court and file a complaint an action to determine the dischargeability of a favorable judgment.

Given that the movant will not enforce any judgment against the debtor or the estate absent a determination under 11 U.S.C. § 523, cause exists to modify the automatic stay to allow the filing and prosecution to judgment of a tort claim in state court. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The state court action shall be filed within 30 days of the entry of the order on this motion.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

22. 17-24023-A-7 ANDREA JIMENEZ HERNANDEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 7-20-17 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2015 Jeep Cherokee (identified as 2016 Jeep Cherokee in the petition documents). The movant has produced evidence that the vehicle has a value of $16,350 ($15,241 in Schedule A/B) and its secured claim is approximately $18,891. Docket 12.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to

permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

23. 17-24653-A-7 CARL LERCH — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
TD AUTO FINANCE L.L.C. VS. — 7-25-17 [11]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, TD Auto Finance, seeks relief from the automatic stay with respect to a 2011 Ford Ranger (last five digits of VIN: 22859). The movant has produced evidence that the vehicle has a value of $10,775 and its secured claim is approximately $11,467. Docket 13.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

24. 17-24057-A-7 ANDREW/LALAINE SLIPHER — MOTION FOR
MDE-1 — RELIEF FROM AUTOMATIC STAY
TOYOTA MOTOR CREDIT CORP. VS. — 7-28-17 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2014 Toyota Camry. The movant has produced evidence that the vehicle has a value of $13,650 ($10,545 per Schedule A/B) and its secured claim is approximately $16,612. Docket 15.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

25. 10-41363-A-7 THOMAS BROOKS — MOTION TO
JCO-1 — AVOID JUDICIAL LIEN
VS. DISCOVER BANK — 7-28-17 [21]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Discover Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not mailed by certified mail and was not addressed to an officer of the creditor. Docket 24. Also, while the debtor served Discover's attorney, Robert Bachman, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

In the event the motion is reset for a hearing, the debtor should note an additional problem. The debtor amended Schedule C on July 28, 2017, to add an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 20. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1).

Further, the debtor also amended his Schedule A to increase the value of the property from $124,000 to $131,099. Docket 20. The debtor should note that exemptions for lien avoidance purposes are determined as of the petition date. Given that seven years have passed since the debtor valued his property last, the court questions whether the Amended Schedule A reflects a value of the property as of the petition date or value of the property as of the Amended Schedule A date. This is a question the motion does not answer.

26. 11-48272-A-7 ANNE MARQUEZ
SMD-3

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
7-29-17 [121]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The chapter 7 trustee, Susan Didriksen, has filed first and final motion for approval of compensation. The requested compensation consists of $19,230.61 in fees and $211.80 in expenses, for a total of $19,442.41. The services for the sought compensation were provided from March 19, 2013 through the present. The sought compensation represents 98.65 hours of services.

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

The movant will make or has made $319,612.14 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $19,230.61 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $13,480.61 (5% of the next $950,000 ($269,612.14)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $19,230.61 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3),

unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

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

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

(1) reviewing petition documents and analyzing assets,

(2) evaluating the debtor's interest in real property and a purchase and sale agreement pertaining to the property,

(3) employing professionals to assist the trustee with the administration of the estate,

(4) communicating with the estate's professionals about various issues,

(5) reviewing claims,

(6) reviewing various pleadings and documents,

(7) addressing tax and accounting issues,

(8) preparing final report, and

(9) preparing compensation motion.

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

27. 15-22990-A-7 XTREME ELECTRIC, INC — MOTION TO ALLOW ADMINISTRATIVE EXPENSES 7-20-17 [109]
JRR-5

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability as follows: $203 to the IRS for the 2015 tax year and $2,466.61 to the California Franchise Tax Board for the 2015, 2016, and 2017 tax years.

11 U.S.C. § 503(b)(1)(B) provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under

section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on April 13, 2015. The tax liability in question was incurred post-petition, in 2016 and 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

28. 15-22990-A-7 XTREME ELECTRIC, INC. MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
JRR-6 7-25-17 [119]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Cianchetta & Associates, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $19,427.76 in fees and $16,144.49 in expenses (including an expert witness charge of $15,014.50), for a total of $35,572.25. The services cover the period from July 13, 2015 through July 21, 2017. The movant's employment as special counsel for the estate was approved on August 5, 2015. Docket 25. The requested compensation is based on a 50% contingency fee compensation arrangement.

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

The movant's services consisted, without limitation, of: preparing and filing adversary proceeding complaint against Segue Construction; defending a motion to abstain; filing answer and cross-complaint in state court; reviewing extensive discovery; propounding discovery, such as conducting depositions of Segue employees; retaining and communicating with expert witnesses; negotiating settlement with Segue; and preparing and filing employment and compensation motions.

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

29. 17-24195-A-7 GOHAR ASLANYAN
JWC-1
TRANSPORT FUNDING, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-31-17 [14]

Final Ruling: The hearing on this motion has been continued to October 23, 2017 at 10:00 a.m. Docket 22.