UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 29, 2016 at 10:00 a.m.

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

5, 9, 10, 11

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 SEPTEMBER 26, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 12, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 19, 2016. 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. 15-26214-A-7 SHARON WILSON — ORDER TO SHOW CAUSE
15-2225
WILSON V. WILSON — 8-8-16 [61]

Tentative Ruling: The court will abstain from adjudicating the instant adversary proceeding.

The court issued this order to show cause in order to give the parties to address whether it was appropriate for the court to abstain from adjudicating this proceeding given the pending state court divorce case.

In this proceeding, plaintiff Kenneth Wilson seeks a declaration as to whether the Epstein credits in favor of the plaintiff against the debtor/defendant Sharon Wilson were discharged in the bankruptcy case. The defendant received her discharge on November 30, 2015.

In the Ninth Circuit, the factors that a court must consider when deciding whether to abstain include:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,

(2) the extent to which state law issues predominate over bankruptcy issues,

(3) the difficulty or unsettled nature of the applicable law,

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,

(7) the substance rather than form of an asserted "core" proceeding,

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

(9) the burden of [the bankruptcy court's] docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to a jury trial, and

(12) the presence in the proceeding of nondebtor parties.

Christensen v. Tuscon Estates, Inc. (In re Tuscon Estate, Inc.), 912 F.2d 1162, 1166-67 (9th Cir. 1990) (citing Republic Reader's Serv., Inc. v. Magazine Serv. Bureau, Inc. (In re Republic Reader's Serv., Inc.), 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)) (cause for lifting the stay may exist where a state court proceeding involves the same issues pending before the bankruptcy court); see also Chey v. Cohen (In re Chey), Case Nos. CC-09-1253-PaMoB, CC-09-1254-PaMoB,

SA 09-13917 RK, SA 09-13910 RK, 2010 WL 6466579, at *6-8 (B.A.P. 9th Cir., Apr. 12, 2010)..

Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding").

Discretionary abstention is appropriate here because there is a pending state court divorce action. Abstention will not have an effect, much less a negative effect, on the administration of the defendant's bankruptcy case. The defendant's bankruptcy case has been administered. The trustee filed a report of no distribution on September 30, 2015 and the debtor received her discharge on November 30, 2015.

Epstein credits are a creature of California divorce law and it is California law that must decide whether Epstein credits are debt. If and when Epstein credits are determined to be debt, the issue of whether they were discharged in the defendant's bankruptcy case will be a relatively simple one, which the state court has jurisdiction to determine. See 11 U.S.C. § 523(c)(1), 11 U.S.C. §§ 523(a)(5) and (a)(15).

The court also notes that the issue of whether Epstein credits are a debt is unsettled. The court has seen no case law tackling this issue, inside or outside the bankruptcy realm. This is another reason to let state courts make state law — especially in family law, an area traditionally and historically reserved for the purview of state law.

Further, Epstein credits are relevant to the division of property in a divorce action. It has no relevance in the defendant's bankruptcy case. The trustee in the bankruptcy case has already indicated that he will not be administering the Epstein credits, assuming they exist and assuming they can be deemed an asset subject to administration. In other words, the existence and use of Epstein credits will be relevant only in the divorce action.

As Epstein credits play a role only in the division of property in a divorce proceeding, separating the issue of their dischargeability from the parties' pending divorce proceeding is not feasible. This is substantiated with the omission of section 523(a)(15) from section 523(c)(1), which means a state court has jurisdiction to determine the dischargeability of support and nonsupport obligations in a divorce.

Finally, as the state court is well-equipped and has the jurisdiction to decide dischargeability of Epstein credits, the court is convinced that this adversary proceeding is an attempt by the plaintiff to forum shop. By bringing the instant proceeding, the plaintiff is seeking to stall the divorce action. The court will exercise discretionary abstention to abstain in the adjudication of this action.

2.	13-34622-A-7 LONNIE NIELSON	MOTION TO
	MKJ-2	AVOID JUDICIAL LIEN
	VS. CHRIS BRUNGARDT AND JAIME PUTNAM	7-25-16 [60]

Tentative Ruling: The hearing on the motion will be continued.

A criminal judgment was entered against the debtor for the sum of $149,587.92 on May 10, 2011. Under California law, the judgment is enforceable as a civil

judgment by the victims of the perpetrator of the crime. See Cal. Penal Code §§ 1214, 1202.4(l) & (m). The victims, Chris Brungardt and Jaime Putnam, recorded an abstract of the judgment with Sacramento County on September 13, 2011. That lien attached to the debtor's 12.2% interest in a commercial real property in Sacramento, California. The debtor seeks to avoid the lien under section 522(f).

The respondents oppose the motion, in part complaining that they have not had the opportunity to obtain an appraisal of the property within the time frame of this motion.

The court is willing to grant the respondents time to obtain an appraisal of the property. The respondents should note though that the debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. Culver, LLC v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). This means that the relevant date of appraisal for the property is November 15, 2013, the petition filing date.

Further, the property does not have to be for sale in order for the court to avoid the lien. This is not prescribed by section 522(f) and the exemption claimed by the debtor here is under Cal. Civ. Proc. Code § 703.140(b)(5), which permits an exemption "in any property." Nothing says that the property has to be listed for sale.

Also, the court will not require the debtor to obtain an appraisal of the property "in order to determine a more realistic value." The debtor is entitled to offer an opinion of value for the property as an owner of the property.

Finally, the exhibits to and factual assertions in the respondents' opposition to the motion are inadmissible. None of them are authenticated and established by admissible evidence such as a declaration or affidavit.

3. 14-31031-A-7 ROCHELLE MANNING-KLAR — MOTION TO RESERVE ASSET UPON CLOSING OF CASE
SCB-2 — 6-20-16 [21]

Tentative Ruling: The hearing on this motion was continued from July 18, 2016, solely for noticing the motion on the present trustee of the family trust (Jeannie Bryan), under which the estate's interest in the real property arises. The record on the motion was otherwise closed.

The motion will be granted.

The trustee asks the court to retain jurisdiction over a partial contingent interest in a real property located in Auburn, California, and derived from the debtor's beneficial interest in a family trust.

Under the terms of the trust, the estate's interest is in a half-plex. According to the motion, "this [half-plex] property [(178 E. Hillcrest Drive)] cannot be sold until the occupant, Daniel G. Filipiak, of the joined duplex property, located at 176 E. Hillcrest Drive, Auburn, CA 95603, dies, remarries or moves out." Docket 1, Schedule B.

The trustee also asks that the court not retain jurisdiction over the estate's

claims against the family trust trustee for failure to collect and distribute rents from the real property to the beneficiaries under the trust.

11 U.S.C. § 554(c) provides: "Unless the court orders otherwise, any property scheduled under section 521 (a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

The debtor's response to the motion was filed late and it will be stricken. It was filed on July 5, 2016, whereas it was due on Friday July 1, 2016. Docket 27. This motion was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(1), which requires written opposition to be filed and served at least 14 days prior to the July 18 hearing. The time for filing written responses to motions is calculated by counting of the 14 days from the hearing backward. Local Bankruptcy Rule 9014-1(f)(1)(B) refers to the 14 day deadline for responses as "preceding the date . . . of the hearing."

Fed. R. Bankr. P. 9006(a)(1)(C) (regarding the counting of days in a period stated in days, prescribing to "include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

As the fourteenth day fell on Monday July 4, a legal holiday, the next day that is not a Saturday, Sunday, or legal holiday was Friday July 1. Yet, the debtor's response was not filed until Tuesday July 5. Docket 27.

Even if the court were to consider the debtor's response, it is unsupported by admissible evidence. None of the factual assertions in the response are supported by a declaration or similarly admissible evidence. Docket 27. For instance, the assertion of other trust beneficiaries with interest in 178 E. Hillcrest is unsupported by admissible evidence.

Third, even if the court were to ignore the procedural and evidentiary deficiencies of the response, the objection to the motion that it seeks two different types of relief is disingenuous. The trustee is merely seeking to clarify that he is not asking the court to retain jurisdiction over the estate's claims against the family trust trustee. The court will not be ordering any relief as to the claims against the family trust trustee. They will be abandoned by operation of law when the case closes. 11 U.S.C. § 554(c).

Fourth, the court rejects the demand that the trustee be required to sell the estate's contingent interest in the real property at the present time. The court will not meddle in the trustee's decisions about how to administer the estate, absent a showing that the trustee's actions are not in the best interest of the creditors and the estate. The debtor has not made such a showing. The response complains only about the debtor's and third-party's burdens that would result from the relief requested by the motion. It says nothing about the creditors or the estate or their interests.

The court also notes that the debtor herself stated in Schedule B, under the penalty of perjury, that the present value of the property interest has a value of $0.00. This begs the question of how the debtor could argue – in good faith – that the trustee should sell the property now, prior to a trust distribution.

Fifth, the debtor's mention of other trust beneficiaries, who are also "in line

to receive an ownership interest in this property," is also disingenuous. It is not supported by admissible evidence and the debtor is the sole beneficiary under the trust as to 178 E. Hillcrest. This does not concern the other half of the duplex subject of the trust, 176 E. Hillcrest.

Sixth, even if the debtor may not have a relationship with Daniel G. Filipiak, the person upon whom distribution of 178 E. Hillcrest hinges, the debtor has a relationship with the family trust trustee, who is in charge of administering the assets of the trust, including 176 E. Hillcrest, where Mr. Filipiak lives. The family trust trustee is in charge of administering the trust. This includes knowing if and when Mr. Filipiak vacates 176 E. Hillcrest, remarries, or passes away. It also includes notifying the estate and the debtor – who asserts a $22,812 exemption in the property trust interest – if and when any of the conditions pertaining to Mr. Filipiak are fulfilled. The family trust trustee owes fiduciary duties to both the bankruptcy estate and the debtor. Thus, it is not unreasonable to order the debtor to notify the estate if and when she finds out that the conditions for distribution of 178 E. Hillcrest have been met. This is consistent with and part of the debtor's obligations under 11 U.S.C. § 521(a)(3) to cooperate with the trustee.

Waiting for the distribution of 178 E. Hillcrest under the trust is in the best interests of the creditors and the estate. The value of the estate's present property interest under the trust is minimal, as evidenced by the debtor's opinion that it is worth nothing. Schedule B, Docket 1. On the other hand, once the conditions for distribution under the trust are met, the value of the estate's property interest under the trust will be substantial. 178 E. Hillcrest is unencumbered. Docket 23 at 2. And the debtor's exemption in the trust property asset is only $22,812.

The unsecured claims in the case total only approximately $21,700, which figure includes approximately $1,700 in priority claims.

An unencumbered half-plex in Auburn, California will generate more than enough to pay the debtor's $22,812 exemption and all $21,700 in unsecured claims.

In addition, the conditions for distributions under the trust are well defined. They include the Mr. Filipiak's leaving 176 E. Hillcrest, his remarriage, or his passing. The family trust trustee administers both 178 E. Hillcrest and 176 E. Hillcrest, meaning that she is charged with monitoring and knowing when these condition occur. When the conditions are satisfied, the trustee "shall" make distributions of the two half-plexes. Docket 25, Ex. A at 3-4.

Further, the conditions for distribution of the estate's half-plex are not likely to occur any time soon. This case has been pending since November 2014, nearly 20 months, yet no condition has been satisfied. From this, the court infers that the conditions for distribution are unlikely to occur in the near future.

See, e.g., In re Hart, 76 B.R. 774, 777 (Bankr. C.D. Cal. 1987) (outlining three factors to be considered when retaining jurisdiction over an asset prior to closing of a bankruptcy case, including:

"*(1) A reasonable possibility must exist that an asset valuable enough to pay substantial dividends to the creditors may be recovered in the future. A potential recovery of minimal value to the creditors would not be sufficient reason to except a claim from abandonment.*

"*(2) The event that will trigger the reopening of the case for distribution of that asset must be well-defined. It should not require any further action by any representative of the estate, for if action is required, then the Chapter 7 Trustee should not be discharged until the necessary steps are completed.*

"*(3) The events that may result in payment to the estate must not be likely to occur soon, for if the asset was expected to be liquidated within say, a year, the case should probably be kept open until then.*").

Accordingly, the motion will be granted. The court will retain jurisdiction over the estate's interest in 178 E. Hillcrest under the trust upon closing of the case. The court will also order that the debtor and family trust trustee report in writing to the United States Trustee when the condition for distribution of 178 E. Hillcrest under the trust occurs. This report shall be made within seven days of actual knowledge of that any condition for distribution has been satisfied.

The court will not enjoin the debtor from transferring any interest in the half-plex. This is unnecessary as the granting of this motion preserves the estate's interest in the property after closure of the case.

4. 16-20945-A-7 DENNIS/MARGARET EDWARDS
SSA-2

MOTION TO APPROVE COMPROMISE AND MOTION FOR DAMAGES
8-3-16 [36]

Tentative Ruling: The motion will be denied.

The trustee seeks an order approving an agreement with the debtors providing for their turnover of a real property in Tracy, California to the trustee. In addition, the trustee requests the court to assess damages against the debtors, in the event they fail to turn over the property as provided by the agreement. The agreement provides for $200 a day in damages.

The motion will be denied because the court cannot assess and award damages against the debtors.

A plaintiff must meet both the constitutional and prudential requirements of standing. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

The trustee cannot satisfy the injury in fact element of standing. Their has been no breach of the agreement entitling the trustee to damages. Damages arising from a future breach of the agreement is a mere speculation. Stated differently, the dispute is not ripe for adjudication.

Further, the agreement with the debtors does not provide for the entry of an abated judgment. Yet, for the court to enter an order or judgment for damages against the debtors for a breach of the agreement, an adversary proceeding is

required. Orders or judgments for damages cannot be obtained on a motion, except in narrow and well-defined circumstances. Fed. R. Bankr. P. 7001(2).

5. 16-23549-A-7 VENTON/NOEMI HAMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 7-19-16 [14]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2012 Chevrolet Cruz vehicle.

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

The petition here was filed on May 31, 2016 and a meeting of creditors was first convened on July 27, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 30. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so yet. The last day for the debtor to reaffirm the debt secured by the vehicle is August 26. The debtor has not filed a reaffirmation agreement and hence the automatic stay was automatically terminated as to the debtor. This motion is moot as to the debtor.

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

The trustee in this case has filed no such motion and the last day for the filing of such a motion was August 26. No such motion was filed and the

automatic stay automatically terminated as to the estate. Once again, the motion is moot.

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

6. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
JHC-2 COMPEL ABANDONMENT
7-18-16 [43]

Tentative Ruling: The motion will be granted as provided in the ruling.

The hearing on this motion was continued from August 15, 2016, in order for the movants to correct the notice for the motion. The notice deficiency has been corrected. Docket 16. An amended ruling from August 15 follows below.

Secured creditors Liberty Mutual Insurance Company and Safeco Insurance Company of America seek an order compelling the trustee to abandon the estate's interest in three checks or the proceeds from those checks.

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.

The checks are identified as follows: a check from Ritchie Brothers Auctioneers in the amount of $11,325.00 and two checks from Brosamer & Wall, Inc. in the respective amounts of $700.00 and $29,085.48. The creditors hold an approximately $26 million claim that is secured by virtually all of the debtor's assets, including the checks and corresponding check proceeds. The value of the assets serving as collateral for the claim is far less than the $26 million claim amount. Docket 45.

Given that there is no equity in the three checks for the estate, in light of the creditors' vast claim, the checks and corresponding proceeds from the checks are of inconsequential value to the estate. The motion will be granted. The three checks identified in the motion will be abandoned *to the debtor*.

As a final note, the supporting declaration refers to a fourth check, from Wells Fargo Bank in the amount of $71,715.70, but the motion does not mention that check and it does not seek abandonment of the check. Dockets 43 & 45. The declaration also contends that this check belongs to the creditors and it is not subject to their claim, as Wells Fargo Bank mistakenly issued it payable to the debtor, instead of to LMIC.

7. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
JHC-3 COMPEL ABANDONMENT
7-18-16 [39]

Tentative Ruling: The motion will be granted as provided in the ruling.

The hearing on this motion was continued from August 15, 2016, in order for the movants to correct the notice for the motion. The notice deficiency has been corrected. Docket 156. An amended ruling from August 15 follows below.

Secured creditor Liberty Mutual Insurance Company seeks an order compelling the trustee to abandon the estate's interest in $71,715.70 the estate received from Wells Fargo Equipment Finance that were actually intended for the movant.

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.

The funds were issued by Wells Fargo Equipment Finance in connection with the movant's purchase of Wells Fargo's claim. The check was mistakenly made payable to the debtor as opposed to the movant.

Given that the funds were paid in connection with the movant's purchase of Wells Fargo's claim, the funds are of inconsequential value to the estate. Accordingly, the court will order their abandonment to the debtor.

8.	16-24261-A-7 C.C. MYERS, INC. MBG-2 VINCENT SOLANO VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-11-16 [132]

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, Vincent Solano, seeks relief from the automatic stay to proceed in state court with its personal injury claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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.

9. 15-29771-A-7 PAUL/ALICE SALINAS — MOTION TO EMPLOY
DNL-1 — 8-8-16 [35]

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 approval to employ Desmond, Nolan, Livaich & Cunningham as counsel for the estate, for the limited purpose of preparing and prosecuting motions to obtain approval of two preference transfer settlements, one with Golden 1 Credit Union and the other with American Express. The proposed compensation is a total flat fee of $2,400, inclusive of costs. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. DNLC is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

10. 15-29771-A-7 PAUL/ALICE SALINAS — MOTION TO APPROVE COMPROMISE
DNL-2 — 8-8-16 [43]

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 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 approval of a settlement agreement with Golden 1 Credit Union, resolving a $5,000 preference payment made by the debtors. Under the terms of the compromise, Golden 1 will pay $3,500 to the estate in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given Golden 1's $535 subsequent new value defense, given the small amount at stake, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

11. 15-29771-A-7 PAUL/ALICE SALINAS — MOTION TO APPROVE COMPROMISE
DNL-3 — 8-8-16 [39]

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 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 approval of a settlement agreement with American Express, resolving a $7,202.23 preference payment made by the debtors. Under the terms of the compromise, American Express will pay $7,202.23 to the estate in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may

approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the 100% recovery on account of the preferential payment, the settlement is equitable and fair.

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

12. 15-29279-A-7 COSTANTINE/HAIFA ERHAYEL — OBJECTION TO EXEMPTIONS
GJH-2 — 6-24-16 [21]

Tentative Ruling: The objection will be dismissed.

The trustee objects to the debtors' Ariz. Rev. Stat. § 33-1126(B) exemptions in:

- $166,638.89 Vantage Retirement Plans, and
- $162,170.14 Wells Fargo IRA.

The trustee has determined that the $162,170.14 Wells Fargo IRA is part of the Vantage Retirement Plans. The trustee claims that the debtors have destroyed the exemption eligibility of the plans by engaging in prohibited transactions for purposes of 26 U.S.C. § 408.

The objection will be dismissed for two reasons. The trustee has filed a motion for approval of a compromise with the debtor, resolving the objection. Also, the objection is not supported by admissible evidence establishing its factual assertions. While some of the facts are probably substantiated by testimony from the debtors at the meeting of creditors, the court cannot tell from the record which facts in the objection are attributable to the debtors.

13. 15-29279-A-7 COSTANTINE/HAIFA ERHAYEL — MOTION TO APPROVE SETTLEMENT
GJH-3 — 8-8-16 [25]

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 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 approval of a settlement agreement with the debtors, resolving the trustee's objection to their Ariz. Rev. Stat. § 33-1126(B) exemptions in:

- $166,638.89 Vantage Retirement Plans, and
- $162,170.14 Wells Fargo IRA.

The trustee has determined that the $162,170.14 Wells Fargo IRA is part of the Vantage Retirement Plans.

In the objection, the trustee claims that the debtors have destroyed the exemption eligibility of the plans by engaging in prohibited transactions for purposes of 26 U.S.C. § 408. The asserted prohibited transactions are specifically as to the Vantage Plans.

Under the terms of the compromise, the debtors will pay $50,000 to the estate, in full satisfaction of the estate's interest in the plans.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the inherent costs, risks, delay and inconvenience of further litigation and given the approximately 31% recovery, the settlement is equitable and fair.

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

FINAL RULINGS BEGIN HERE

14. 15-23812-A-7 ROGER ENGSTROM — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 7-25-16 [23]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

15. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-29 — 7-15-16 [1003]
VS. DUNN & BRADSTREET

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the $966.56 priority claim under 11 U.S.C. § 507(a)(2) of Dun & Bradstreet (POC 38-1), requesting classification as a general unsecured claim. The $966.56 claim represents only a portion of Proof of Claim 38-1, in the aggregate amount of $5,896, with the remainder of POC 38-1 filed as a general unsecured claim.

11 U.S.C. § 507(a)(2) refers to administrative claims under section 503(b), which requires notice and a hearing for such claims. As the $966.56 claim has not been approved as an administrative claim in accordance with the notice and hearing requirements of section 503(b), the objection will be sustained.

16. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-30 — 7-15-16 [1008]
VS. BRENT BEECHER CHARMBURY

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On May 16, 2012, claimant Brent Charmbury filed a proof of claim in the amount

of $12,013.78 (claim no. 1-2), all classified as a priority claim under 11 U.S.C. § 507(a)(4), consisting of:

- $2,612 for wages, earned from March 5, 2012 through March 25, 2012, and

- $9,401.78 for benefits, accrued from August 2011 through March 2012.

POC 1-2.

The trustee objects to the proof of claim, disputing the priority classification of $5,384.99 of the claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

Based on the debtor's cessation of doing business date of March 19, 2012, the court calculates the 180 days for section 507(a)(4) purposes to have started on September 21, 2011. The $2,612 portion of the claim was earned within the 180-day period of section 507(a)(4). From the $9,401.78 portion of the claim, $4,016.79 was also earned during the 180-day period of section 507(a)(4). Thus, the court will sustain the objection with respect to the $5,384.99 remainder of the $12,013.78 claim. This part of the claim will be classified as a general unsecured claim.

17. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-31
VS. DONALD KEITH MARDESICH — 7-15-16 [1015]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On July 11, 2012, claimant Donald Mardesich filed a proof of claim in the amount of $34,410.32 (claim no. 39-1), all classified as a priority claim under 11 U.S.C. § 507(a)(4), consisting of:

- $3,513.17 for wages earned from March 1, 2012 through March 15, 2012,

- $4,615.20 for unpaid vacation, accrued from July 15, 2009 through March 23, 2012, representing 80 hours at $57.69 an hour,

- $8,380 for unpaid incentive bonus,

- $461.52 a day (not to exceed 30 days) as penalties assessed by the California

State Labor Commissioner,

POC 1-2.

The trustee objects to the proof of claim, disputing the priority classification of $30,897.15 of the claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

Based on the debtor's cessation of doing business date of March 19, 2012, the court calculates the 180 days for section 507(a)(4) purposes to have started on September 21, 2011.

The court cannot tell from the proof of claim whether any part of the vacation pay was accrued within the 180-day period of section 507(a)(4). The attachments do not provide any details on this question.

Although the bonus is stated to be "for the period ending 3/23/12," some of the attachments to the proof of claim indicate that the bonus was outstanding since 2010 or 2011, placing it outside the 180-day period of section 507(a)(4).

And, the court will disallow the penalties as priority, as section 507(a)(4) does not provide for penalties to be afforded priority status.

This leaves only the wages of $3,513.17 as priority, earned after September 21, 2011, within the 180-day period of section 507(a)(4). The objection will be sustained. $30,897.15 of the claim will be reclassified as a general unsecured claim.

18. 15-29525-A-7 LARRY/KELLY BUCKINGHAM — MOTION FOR TURNOVER OF PROPERTY
SCB-3 — 8-1-16 [47]

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.

The trustee requests turnover of a real property in Marysville, California, in order to prepare for sale, market and sell the property.

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.

According to the debtors, there is approximately $60,000 of equity in the property. The property has a value of $233,455, with a $150,706 mortgage and a $22,250 exemption. The trustee has retained a real estate broker and is prepared to liquidate the property. The debtors have refused to turn over the property to the estate. The court will order the debtors to turn over the real property or its value to the estate, within 14 days of entry of the order on this motion. The motion will be granted.

19. 12-21930-A-7 KELLY/SHERRY BUTLER — MOTION TO APPROVE COMPROMISE
SCB-5 — 8-1-16 [63]

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 approval of two settlement agreements. One of them is between the estate and the debtors on one hand and a doctor who operated on Mrs. Butler's gallbladder on the other hand. The doctor severed Mrs. Butler's bile duct, requiring her to have annual stent installations, replacement and maintenance. Under the proposed compromise, the doctor will pay $135,000 in full satisfaction of the claims for Mrs. Butler's injuries.

The other compromise is between the estate and the debtors, concerning their full exemption claim in the lawsuit proceeds and their decrease of exemptions in three vehicles, leaving $18,587 of nonexempt equity in the vehicles. Under the proposed compromise, the debtors will be allowed an exemption in the lawsuit proceeds in the amount of $35,097.74, with the remaining net lawsuit proceeds going to the estate.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors

with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the only $15,276.47 of filed unsecured claims, given that the settlements will permit the trustee to pay all or nearly all claims against the estate, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlements are equitable and fair.

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

20. 12-21930-A-7 KELLY/SHERRY BUTLER — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
SCB-6 — 8-1-16 [57]

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 has filed the first and final motion for approval of compensation for Graham Scott of Zumwalt Law Firm, special counsel for the estate. The requested compensation consists of $35,627.79 (reduced from $45,416.65) in fees and $33,468 in expenses, for a total of $69,095.79. The compensation relates to medical malpractice litigation pertaining to the removal of a gallbladder.

The services cover the period from late 2012 through June 2016. The movant's employment as special counsel for the estate was approved on April 25, 2016. The requested compensation is based on a sliding scale contingency fee arrangement, including 40% from the first $50,000 in recovery, 33.3% from the next $50,000 in recovery, 25% from the next $500,000 of recovery, and 15% from the recovery of anything above $600,000.

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: reviewing over 10,000 pages of documents, preparing the complaint, preparing for and taking depositions, investigating and obtaining disciplinary records, locating and retaining experts, preparing them for depositions, reviewing the depositions transcripts of the defendant's experts from another malpractice action against the defendant, and preparing and defending evidentiary 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.

21. 15-28031-A-7 SATORI TODD — ORDER TO SHOW CAUSE 8-11-16 [46]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor filed an Amended Verification and Master Address List on July 28, 2016, but did not pay the $30 filing fee. However, the debtor paid the fee on August 15, 2016. No prejudice has resulted from the delay.

22. 13-25733-A-7 RODNEY/REGINA LARKINS — MOTION TO APPROVE COMPROMISE 8-1-16 [54]
HCS-1

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 approval of a settlement agreement between the estate and the debtors on one hand and a medical device manufacturer on the other hand, resolving a products liability claim involving an injury Mrs. Larkins had sustained from having the device installed on her. Under the terms of the compromise, the device manufacturer defendant will pay $90,000 in full satisfaction of the claim. The estate will net approximately $20,897, after payment of attorney's fees ($32,400) and expenses ($2,359.83), multi district litigation special fees ($4,500), a Medi-Cal lien ($250.23), and an exemption claim of $29,592.81.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the premature passing of Mrs. Larkins since installation of the device (due to unrelated causes), given that this is only

one of 75,000 other cases part of substantial multi district litigation, given the uncertainty of the defendant's future financial condition, given that the litigation is already three years old and it may take many more years, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

23. 15-29033-A-7 FRANCISCO PENA — MOTION FOR RELIEF FROM AUTOMATIC STAY
JFL-1 — 7-30-16 [85]
HSBC BANK USA, N.A. VS.

Final Ruling: The motion will be dismissed without prejudice because the trustee was served at an incorrect address. The zip code of the trustee's address in the proof of service for the motion is incorrect.

24. 11-42346-A-7 ERNEST BEZLEY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-8 — 7-28-16 [305]

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 of $80,000, reduced from $80,947 in fees and $2,935.03 in expenses. This motion covers the period from June 3, 2013 through the present. The court approved the movant's employment as the trustee's attorney on June 12, 2013 (approving the employment of the movant's predecessor law firm). In performing its services, the movant charged hourly rates of $90, $225, $250, $295, $315 and $325.

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

(1) reviewing documents from the debtor's chapter 11 case,

(2) assisting the estate with analysis of 11 different real properties,

(3) preparing and filing three stipulations for extension of the deadlines for filing objections to discharge and objections to exemptions,

(4) assisting the trustee with unique bankruptcy issues in responding to offers for the purchase of the properties,

(5) appearing at various court hearings,

(6) negotiating with the debtor about the sale of the properties,

(7) communicating and negotiating with the debtor's spouse about liquidation issues and her interest in properties,

(8) responding to a stay relief motion by creditor Harold Jennings,

(9) reviewing loans made by Harold Jennings to the debtor and analyzing usury rate issues about the loans,

(10) preparing and prosecuting an adversary proceeding against Harold Jennings, asserting usury interest claims,

(11) appearing at various hearings in the adversary proceeding,

(12) reviewing motion to intervene by the debtor's spouse,

(13) preparing for and taking the deposition of Mr. Jennings,

(14) meeting with the debtor and his wife about litigation strategy,

(15) negotiating settlement of the adversary proceeding with Mr. Jennings,

(16) participating in a BDRP mediation with Mr. Jennings,

(17) preparing the settlement agreement,

(18) continuing negotiations with Mr. Jennings after he decided to back out of the settlement,

(19) making further revisions of the settlement agreement,

(20) preparing and prosecuting a motion to approve the settlement with Mr. Jennings,

(21) preparing communications with Geirge H. Reed, Inc. about its proof of claim,

(22) preparing and prosecuting an objection to the proof of claim of George H. Reed, Inc., and

(23) 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.

25. 11-42346-A-7 ERNEST BEZLEY
PEQ-1

MOTION TO
APPROVE COMPENSATION OF ACCOUNTANT
7-28-16 [295]

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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $4,240 in fees and $0.00 in expenses. This motion covers the period from October 6, 2014 through March 14, 2016. The court approved the movant's employment as the estate's accountant on November 10, 2014. In performing its services, the movant charged hourly rates of $175 and $250.

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, the preparation of 10 estate tax returns and preparing and sending letters to the taxing authorities on behalf of the estate.

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

26. 16-23247-A-7 ROSE FACIANE

ORDER TO
SHOW CAUSE
8-8-16 [65]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor filed an Amended Schedules E/F and H on July 25, 2016, but did not pay the $30 filing fee. However, the court issued an order on August 8, 2016, waiving the debtor's filing fee. Docket 68. No prejudice has resulted from the delay.

27. 11-48462-A-7 RITA PARSONS
MPD-3

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
7-27-16 [51]

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.

Michael Dacquisto, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,172.50 in fees and $157.10 in expenses, for a total of $9,329.60. This motion covers the period from December 18, 2012 through the present. The court approved the movant's employment as the trustee's attorney on January 17, 2013. In performing its services, the movant charged hourly rates of $325, $350 and $375.

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) assisting the estate with responding to a turnover request from the debtor, pertaining to insurance residuals, (2) analyzing the insurance residuals in question, (3) reviewing petition documents, (4) preparing response to the debtor's request for turnover, (5) negotiating with the debtor's new counsel about the residuals, (6) preparing settlement agreement with the debtor over the residuals, (7) preparing and prosecuting a motion to approve the settlement, (8) assisting the estate with the payment of an IRS claim, and (9) 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.

28. 16-22567-A-7 SOPHIE JACKSON — MOTION TO EXTEND DEADLINE 7-21-16 [12]
UST-1

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 debtor 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 United States Trustee seeks a 70-day extension, from July 22 to September 30, 2016, of the deadline for filing complaints objecting to discharge under Section 727. The movant seeks the extension because the debtor failed to disclose an insider payment she made to her parents.

Bankruptcy Rule 4004(b) provides that the court may extend the deadline for filing Section 727 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing Section 727 complaints here was July 22, 2016. The instant motion was filed on July 21. Thus, the motion complies with the temporal requirements of Rule 4004(b).

Given the debtor's failure to disclose the insider payment and given the movant's desire to further investigate this transaction, there is cause for extension of the deadline for filing Section 727 complaints. The motion will be granted and the deadline extended to September 30, 2016.

29. 15-29268-A-7 JOANNE GODREAU — MOTION FOR ADMINISTRATIVE EXPENSES
ASF-2 — 7-21-16 [65]

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 to the IRS in the amount of $7,721 and to the California Franchise Tax Board in the amount of $5,003, of post-petition estate income tax liability for first and final fiscal year ending August 31, 2016.

11 U.S.C. § 503(b)(1)(B) provides that "After 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 November 30, 2015. The tax liability in question was incurred from 2015 through 2016. 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.

30. 15-29268-A-7 JOANNE GODREAU — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
ASF-2 — 7-27-16 [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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $2,953 in fees and $88.42 in expenses, for a total of $3,041.42. This motion covers the period from December 28, 2015 through the present. The court approved the movant's employment as the estate's accountant on January 13, 2016. In performing its services, the movant charged hourly rates of $345 and $365.

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, reviewing past tax returns and preparing estate tax returns.

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

31. 16-21976-A-7 ELSIE GIVENS — MOTION TO COMPEL ABANDONMENT 5-31-16 [16]
NBC-1

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 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.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property (Hatfield Road). The entire equity in the property is exempt.

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.

The property has a scheduled value of $185,000, subject to secured claims totaling $17,806. The debtor has also claimed a $175,000 exemption in the property. The trustee has filed a nonopposition.

Given the property's value, encumbrances and exemption claim, the court concludes that the property is of inconsequential value to the estate. The

motion will be granted.

32. 14-21184-A-7 SIMON RAMSUBHAG — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-3 — 7-28-16 [49]

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 of $25,000 in fees (reduced from $28,214) and $1,470.14 in expenses, for a total of $26,470.14. This motion covers the period from March 13, 2014 through the present. The court approved the movant's employment as the trustee's attorney on April 14, 2014. In performing its services, the movant charged hourly rates of $150, $175, $185, $225, $275, $295, $315, $325 and $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) reviewing petition documents, (2) researching community property issues about property of the estate, (3) investigating a $100,000 personal loan made by the debtor, (4) communicating with the debtor about the loan, (5) negotiating with the obligors on the loan, (6) preparing settlement agreement regarding payment of the loan, (7) preparing and prosecuting an adversary proceeding complaint against the obligors on the loan, for their breach of the settlement agreement, (8) obtaining default and default judgment against the obligors on the loan, (9) investigating assets of the obligors and collecting on the default judgment, (10) preparing requests for orders for examinations of the obligor judgment debtors, (11) negotiating with the obligors about payment of the judgment, (12) preparing and prosecuting a motion for approval of a settlement with the obligors, and (13) 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.

33. 12-24198-A-7 CARLA MEDRANO — MOTION TO AVOID JUDICIAL LIEN
PLC-3 — 8-1-16 [46]
VS. GOLDEN 1 CREDIT UNION

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Golden 1 Credit Union, 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 solely to an officer of the institution.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail. Docket 50. Also, from the proof of service, the court cannot tell who is Dustin Luton, the person to whom the notice was addressed.

And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

34. 16-23549-A-7 VENTON/NOEMI HAMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 7-20-16 [20]
WELLS FARGO BANK, N.A. VS.

Final Ruling: The motion will be dismissed without prejudice because it is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(3). See Docket 20. Also, the narrative of the amended notice of hearing states that the hearing time for the motion is 1:30 p.m.; this is incorrect, it is 10:00 a.m. Docket 30.