UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 9, 2014 at 9:32 A.M.

---

1. 12-29353-B-11 DANIEL EDSTROM
UST-2

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
7-24-14 [217]

Tentative Ruling: The debtor's opposition is overruled. The bankruptcy case is converted to one under chapter 7.

By this motion, the United States Trustee (the "UST") seeks conversion of this chapter 11 case to one under chapter 7, or, alternatively, dismissal of the case. Pursuant to 11 U.S.C. § 1112(b)(1), the court, after notice and a hearing, shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1112(b) limits the foregoing directive in several ways:

First, under section 1112(b)(1), the court shall not convert or dismiss the case if the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate. Section 1104(a)(2) states that "at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor." 11 U.S.C. § 1104(a)(2).

Second, under section 1112(b)(2), the court may not convert or dismiss the case, even if the movant establishes cause, if the court finds and specifically identifies "unusual circumstances" establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes the requirements of sections 1112(b)(2)(A) and (B). Specifically, the debtor or any other opposing party in interest must establish that:

> (A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
>
> (B) The grounds for converting or dismissing the case include an act

> or omission of the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation - (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2)(A)-(B).

11 U.S.C. § 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." If one of the enumerated examples of cause set forth in 11 U.S.C. § 1112(b)(4) is proven by the movant by a preponderance of the evidence, the court must find that the movant has established cause. 7-1112 Collier on Bankruptcy § 1112.04 (16th ed. 2013).

The court finds, for the reasons stated in the motion, that the UST has met her initial burden of establishing cause for dismissal or conversion of this case under 11 U.S.C. § 1112(b)(4)(A), (F):

1.) The debtor's most recently filed monthly operating report (MOR) for the period ending July 31, 2014 indicates a cumulative deficiency of receipts over disbursements of $6,193.00 since the commencement of the case on May 15, 2012. The debtors next most recently filed MOR for the period ending June 30, 2014 indicated cumulative deficiency of receipts over disbursements of $5,725.00 since the commencement of the case on May 15, 2012. This is evidence of a continuing diminution of the estate.

The UST has also satisfied her initial burden of showing absence of a reasonable likelihood of rehabilitation. The debtor's most recently filed plan and disclosure statement (Dkt. 179, 180) were filed on February 3, 2014, 218 days before the date of this hearing. The disclosure statement was denied approval by order entered April 3, 2014, which order also sustained the objection of U.S. Bank, N.A. to approval of the disclosure statement based on, inter alia, the plan's proposal to modify U.S. Bank, N.A.'s secured claim in contravention of the anti-modification provision of 11 U.S.C. § 1123(b)(5). The debtor has not filed an amended plan or disclosure statement since then. This constitutes cause for conversion or dismissal pursuant to § 1112(b)(4)(A).

2.) The debtor does not dispute that he did not timely file the MOR for the period ending December 31, 2013, and the court has issued no order excusing its late filing on August 14, 2014, after the present motion was filed. This constitutes cause for conversion or dismissal pursuant to § 1112(b)(4)(F).

The court also finds that cause for conversion or dismissal exists pursuant to 11 U.S.C. § 1121(b)(4)(J), based on the debtor's failure to file a plan and disclosure statement within the time fixed by order of the court. On September 27, 2012, the court issued an Order After Status Conference (Dkt. 67) which required the debtor to file a plan and disclosure statement on or before October 16, 2012. The debtor did not file his initial plan and disclosure statement until October 30, 2012, 14 days late.

Having found that cause exists to dismiss the case or convert it to one under chapter 7, the burden now shifts to the debtor to establish the requirements of 11 U.S.C. § 1112(b)(2). The debtor has not done so. Specifically, the debtor has not shown that any unusual circumstances

exist which establish that converting or dismissing the case is not in the best interest of creditors and the estate. The debtor has also not shown that there is a reasonable likelihood that he will confirm a plan within a reasonable amount of time. The debtor asserts that he will file a "straightforward" plan "in the very near future . . . . predicated upon and incorporating substantially increased income realized very recently." However, the debtor does not describe what his supposedly "straightforward" plan will entail, and in light of the debtor's prior proposals of plans containing questionable provisions such as, inter alia, blanket avoidance and "expungement" of all liens and interests in the debtor's property (Dkt. 80 at 7-8, ¶¶ 6.07, 6.08), "recoupment" of monies paid to creditors (Dkt. 80 at 10-11, ¶¶ 6.27, 6.27), allowing the debtor to act as an agent of certain creditors for the purpose of effectuating the aforementioned avoidances (Dkt. 80 at 9, ¶ 6.17) as well as the aforementioned modification of U.S. Bank, N.A.'s claim in contravention of § 1123(b)(5), the court is unwilling to accept the debtor's conclusory statement in his opposition that the forthcoming plan and disclosure statement will be straightforward and confirmable within a reasonable amount of time.

The court acknowledges that on September 2, 2014, the debtor filed a second amended plan (Dkt. 239) and disclosure statement (Dkt. 240) which continues to treat U.S. Bank's claim secured by the debtor's principal residence as an impaired claim in contravention of 11 U.S.C. § 1123(b)(5). Although the court entered an order on February 26, 2013, granting the debtor's motion to value collateral and valuing the debtor's residence at $65,880.00 as of the petition date, the order says nothing about the amount of U.S. Bank N.A.'s allowed secured claim, and the ruling on the motion to value collateral (Dkt. 134) clearly states that the valuation "does not establish value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation." As noted above, the court previously sustained U.S. Bank, N.A.'s objection to the debtor's first amended disclosure statement based in part on its objection that the proposed treatment of its secured claim violated 11 U.S.C. § 1123(b)(5). The debtor appears to have completely ignored the court's ruling on U.S. Bank, N.A.'s objection.

The evidence in the record conveys a picture of the debtor as an individual perfectly content to proceed indefinitely under chapter 11 without pursuing confirmation of a plan until the UST filed this motion, 800 days after the commencement of the case, at which time the debtor proceeded to find counsel (who filed the second amended plan and an application for approval of his employment on September 2, 2014, one week before the continued hearing on this motion) to file opposition to the motion and to prepare and file a plan and disclosure statement. The evidence does not show the debtor to have a sincere desire to reorganize his financial affairs.

The court converts the case to one under chapter 7 rather than dismiss the case. As the UST points out the motion, the debtor has scheduled several assets with an "undetermined" value and of those assets which debtor has scheduled, there appears to be non-exempt equity which a chapter 7 trustee may investigate and administer for the benefit of creditors.

The court will issue a minute order.

2. 13-29374-B-11 SUSAN GLINES-THOMPSON — MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
UST-2 — 7-29-14 [172]

Tentative Ruling: The debtor's opposition is overruled. The motion is granted. The bankruptcy case is converted to one under chapter 7.

By this motion, the United States Trustee (the "UST") seeks conversion of this chapter 11 case to one under chapter 7, or, alternatively, dismissal of the case. Pursuant to 11 U.S.C. § 1112(b)(1), the court, after notice and a hearing, shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1112(b) limits the foregoing directive in several ways:

First, under section 1112(b)(1), the court shall not convert or dismiss the case if the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate. Section 1104(a)(2) states that "at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor." 11 U.S.C. § 1104(a)(2).

Second, under section 1112(b)(2), the court may not convert or dismiss the case, even if the movant establishes cause, if the court finds and specifically identifies "unusual circumstances" establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes the requirements of sections 1112(b)(2)(A) and (B). Specifically, the debtor or any other opposing party in interest must establish that:

> (A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
>
> (B) The grounds for converting or dismissing the case include an act or omission of the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation - (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2)(A)-(B).

11 U.S.C. § 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." If one of the enumerated examples of cause set forth in 11 U.S.C. § 1112(b)(4) is proven by the movant by a preponderance of the evidence, the court must find that the movant has established cause. 7-1112 Collier on Bankruptcy § 1112.04 (16th ed. 2013).

The court finds, for the reasons stated in the motion, that the UST has

met her initial burden of establishing cause for dismissal or conversion of this case under 11 U.S.C. § 1112(b)(4)(E) and (J). The UST and the debtor do not dispute that this case is designated as a "small business case," filed on July 15, 2013. 11 U.S.C. § 1121(e)(2) states that in a small business case that the "the plan and disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief." 11 U.S.C. § 1121(e)(2). In this case 300 days after the order for relief was Monday, May 12, 2014, allowing for the automatic extension of time afforded by Fed. R. Bankr. P. 9006(a)(1). The debtor did not file any plan and disclosure statement in this case until August 25, 2014, after the present motion was filed and 406 days after the case was commenced.

Having found that cause exists to dismiss the case or convert it to one under chapter 7, the burden now shifts to the debtor to establish the requirements of 11 U.S.C. § 1112(b)(2). The debtor has not done so. The debtor argues that she has filed a motion to withdraw her small business designation, which motion appears elsewhere on this calendar. The court has denied that motion on its merits and because there is no evidence on the docket that the motion was served on any party in interest. As to the merits of the debtor's argument, a post-petition change in the aggregate amount of noncontingent, liquidated secured and unsecured debts which increases the amount of said debts beyond the $2,490,925.00 limit specified for a "small business debtor" as defined in 11 U.S.C. § 101(51D) does not "disallow" or invalidate the debtor's small business status. As set forth in § 101(51D), the amount of debt relevant for a small business designation is determined as of the date of the filing of the petition. As of the date of the filing of the petition, the debtor's own sworn schedules reported aggregate noncontingent, liquidated secured and unsecured debts in the amount of $2,106,294.24, well under the $2,490,925.00 limit.

The court is also not persuaded by the debtor's argument, to the extent she raises it, that she is erroneously designated as a small business debtor because her primary activity is the business of owning or operating real property or activities incidental thereto. The debtor admits in her motion that she owns real property located at 10393 Pleasant Grove School Road, Elk Grove, California, on which she operates a school facility called Sheldon Acres Child Development Center. The court did not find authority on the definition of the term "activities incidental thereto" as it is used for the purposes of § 101(51D), but notes that is also found under the definition of "single asset real estate" under § 101(51B). Courts interpreting the term under § 101(51B) have held that "activities incidental" to the operation of real property do not include the operation of a substantial business by the debtor on the real property. See In re Hassen Imports Partnership, 466 B.R. 492, 507 (Bankr. C.D. Cal. 2012); 2 Collier on Bankruptcy, ¶ 101.51B (16th Ed. 2014)(conduct of a substantial business on real property is not an activity incidental to operation of real property).

Based on the foregoing, in light of the debtor's failure to file a plan and disclosure statement pursuant to the deadline established by 11 U.S.C. § 1121(e)(2), continuation of the chapter 11 case at this point would be futile, as it is impossible for the debtor to confirm a plan. The court converts the case to one under chapter 7 rather than dismiss it, as the debtor's most recent monthly operating report for the period ending July 31, 2014, indicates an end-of-month cash balance of $56,293.00, which may be administered by a chapter 7 trustee as a non-

exempt asset of the estate.

The court will issue a minute order.

3. 13-29374-B-11 SUSAN GLINES-THOMPSON
MLA-7

MOTION FOR WITHDRAWAL OF SMALL BUSINESS DESIGNATION AND EXTEND TIME TO FILE PLAN AND DISCLOSURE STATEMENT
8-25-14 [190]

Tentative Ruling: The opposition filed by the United States trustee (the "UST") is sustained. The motion is denied.

The UST's opposition is sustained for the reason set forth therein. A post-petition change in the aggregate amount of noncontingent, liquidated secured and unsecured debts which increases the amount of said debts beyond the $2,490,925.00 limit specified for a "small business debtor" as defined in 11 U.S.C. § 101(51D) does not "disallow" or invalidate the debtor's small business status. As set forth in § 101(51D), the amount of debt relevant for a small business designation is determined as of the date of the filing of the petition. As of the date of the filing of the petition, the debtor's own sworn schedules reported aggregate noncontingent, liquidated secured and unsecured debts in the amount of $2,106,294.24, well under the $2,490,925.00 limit.

The court is also not persuaded by the debtor's argument, to the extent she raises it, that she is erroneously designated as a small business debtor because her primary activity is the business of owning or operating real property or activities incidental thereto. The debtor admits in her motion that she owns real property located at 10393 Pleasant Grove School Road, Elk Grove, California, on which she operates a school facility called Sheldon Acres Child Development Center. The court did not find authority on the definition of the term "activities incidental thereto" as it is used for the purposes of § 101(51D), but notes that is also found under the definition of "single asset real estate" under § 101(51B). Courts interpreting the term under § 101(51B) have held that "activities incidental" to the operation of real property do not include the operation of a substantial business by the debtor on the real property. See In re Hassen Imports Partnership, 466 B.R. 492, 507 (Bankr. C.D. Cal. 2012); 2 Collier on Bankruptcy, ¶ 101.51B (16th Ed. 2014)(conduct of a substantial business on real property is not an activity incidental to operation of real property).

Finally, the motion is also denied because there is no evidence on the court's docket that it was served on any party in interest, as the debtor did not file any proof of service for the motion.

The court will issue a minute order.

4. 13-29374-B-11 SUSAN GLINES-THOMPSON
MLA-5

MOTION TO VALUE COLLATERAL OF JAMES/JUDITH A. MONK
8-26-14 [197]

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

The motion is dismissed.

The motion is moot. Elsewhere on this calendar the court has granted the motion of the United States trustee to convert this case to one under chapter 7.

The court will issue a minute order.

5. 13-31040-B-11 JIMMY ALEXANDER
DSS-8

MOTION FOR AN ORDER PERMITTING THE WITHDRAWAL OF PAMELA R. ELLIOTT , AND/OR MOTION TO EMPLOY DAVID S. SILBER AS ATTORNEY(S)
8-24-14 [225]

Tentative Ruling: The motion is dismissed.

There is no evidence on the court's docket that the motion was properly served, as the movant did not file a certificate of service with the motion. Pursuant to Fed. R. Bankr. P. 2014(a), the movant was required to serve the motion on the United States trustee.

In addition, the movant's request for authorization for the debtor in possession to employ David Silber as counsel for the debtor in possession is moot. By order signed September 4, 2014, the court granted the United States trustee's motion to dismiss the bankruptcy case.

The court will issue a minute order.

6. 14-20832-B-7 LUELLA VAUGHN
14-2194 PD-1
VAUGHN V. CITIMORTGAGE INC. ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
8-7-14 [29]

Tentative Ruling: The debtor's opposition is overruled. The debtor's request that the motion be stricken is denied. The motion is granted. The adversary proceeding is dismissed.

Movant, defendant Citimortgage, Inc. ("Citimortgage"), requests dismissal of this adversary proceeding on various grounds, including 1.) for lack

of subject matter jurisdiction, based on debtor's lack of standing to prosecute the adversary proceeding; 2.) for lack of subject matter jurisdiction, based on the non-core nature of the claims alleged in the first amended complaint filed on July 7, 2014 (Dkt. 6); 3.) that the court should abstain from deciding the claims alleged in the FAC; and 4.) that the FAC does not state a claim upon which relief may be granted.

Of the foregoing grounds, the court finds Citmortgage's jurisdictional arguments to be the most compelling. In the FAC, the debtor alleges that Citimortgage cannot enforce any claim or right to payment against her real property located at 505 Franesi Way, Sacramento, California (the "Property") because Citimortgage is not and cannot prove that it is a holder of a promissory note secured by a deed of trust on the Property. The debtor prays that Citimortgage and co-defendant NBS Default Services, LLC ("NBS") be enjoined from foreclosing on the Property, that the court determine that Citimortgage holds no lien against the Property and the title to the Property be quieted in the debtor's favor.

The court dismisses the adversary proceeding because the debtor does not have standing to prosecute the claims alleged in the FAC against Citimortgage and NBS. The court takes judicial notices that the debtor commenced the parent bankruptcy case for this adversary proceeding on January 30, 2014. In an amended Schedule D filed on April 9, 2014, in the parent bankruptcy case the debtor scheduled Citimortgage as the holder of two claims secured by first and second priority deeds of trust on the Property as of the date of the filing of the petition. The court also takes judicial notice that on her sworn Schedule B the debtor did not schedule any of the claims she now asserts against Citimortgage as property of the bankruptcy estate. Even though she did not schedule the claims alleged in the FAC they became property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(1) as "legal or equitable interests of the debtor in property" when her bankruptcy case was filed. Turner v. Cook, 362 F.3d 1219, 1226 (9th Cir.), cert. denied, 543 U.S. 987 (2004)("Causes of action are among such legal or equitable interests."). Because the claims were not scheduled, they were never abandoned to the debtor's possession and control following her receipt of a discharge and closure of the parent bankruptcy case. 11 U.S.C. § 554(c), (d). The bankruptcy estate, not the debtor, is the real party in interest with prudential standing to assert the claims alleged in the FAC against Citimortgage. See Dunmore v. U.S., 385 F.3d 1107, 1112 (9th Cir. 2004)(Assets not scheduled by debtor remained bankruptcy estate property post-bankruptcy, depriving the debtor of prudential standing to pursue the claims.) The debtor's lack of prudential standing to assert the claims in the FAC constitutes grounds for dismissal of the adversary proceeding for lack of subject matter jurisdiction pursuant to Fed. R. Bankr. P. 7012, incorporating Fed. R. Civ. P. 12(b)(1).

Further, even if the debtor had obtained abandonment of the claims by the bankruptcy estate prior to commencing the adversary proceeding, the court would still dismiss the adversary proceeding because it does not have subject matter jurisdiction over claims of the type alleged in the FAC. The basis for the court's jurisdiction over this matter is found in 28 U.S.C. § 1334, which provides, in relevant part

> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil

proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b)(emphasis added).

"[C]laims that arise under or in Title 11 are deemed to be 'core' proceedings, while claims that are related to Title 11 are 'noncore' proceedings." In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Claims that arise under Title 11 are those that involve a cause of action created or determined by a statutory provision of Title 11. Id., citing In re Wood, 825 F.2d 90, 96-97 (5th Cir. 1987). Claims that arise in Title 11 are " 'administrative' matters that arise solely in bankruptcy cases . . . [They] are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy." Wood, 825 F.2d at 97.

Claims that are "related to" a case under title 11, are, generally speaking, those claims that are owned by the debtor at the time the petition is filed and that become part of the estate pursuant to 11 U.S.C. § 541(a). They may also include proceedings that take place between third parties. See 1 Lawrence P. King, et al., Collier on Bankruptcy, § 3.01[3][c] (15th Ed. rev. 2010). The Ninth Circuit has concluded that a "related" proceeding is largely synonymous with a "non-core" proceeding. See Benedor Corporation v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.), 71 F.3d 1460, 1464, n.3 (9th Cir. 1995). A non-core proceeding "'does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy . . . .'" In re Harris Pine Mills, 44 F.3d at 1435 (quoting Wood, 825 F.2d at 96-97). A bankruptcy court has jurisdiction over a related proceeding when "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). See also In re Feitz, 852 F.2d 455, 457 (9th Cir. 1988).

In this case, the claims alleged in the FAC are entirely based on California state law. They are not core claims because they are not created by operation of the Bankruptcy Code, nor are they administrative matters that could arise only in a bankruptcy case. The claims alleged in the FAC are non-core "related-to" claims. However, if the debtor were able to have the claims abandoned to her possession and control the outcome of the debtor's adversary proceeding would have no effect on the bankruptcy estate. Therefore, if the debtor were to have the claims deemed abandoned by the estate the court would dismiss them pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

The debtor's opposition to the motion and her request that the motion be "stricken" based on her argument that Citimortgage does not have standing to bring the motion is not persuasive. The debtor gave Citimortgage standing to file this motion to dismiss when she commenced the adversary proceeding and named Citmortgage as a defendant party to the adversary proceeding; Fed. R. Civ. P. 12(b) specifically allows a "party" to assert defenses to an adversary proceeding. The debtor's argument that Citimortgage has not presented any "sworn declaration" with the motion is also not persuasive because the court's analysis here does not depend on any evidence submitted by Citimortgage, but instead of matters which appear on the court's own docket and of which the court may take judicial notice.

The court will issue a minute order.

7. 14-25720-B-7 IRIS DAVIS BOWIER — MOTION FOR ORDER AVOIDING WAGE GARNISHMENT AND/OR MOTION FOR ORDER PERMITTING TURNOVER OF GARNISHED FUNDS
JMC-1 — 8-6-14 [26]

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

The motion is dismissed without prejudice.

The motion was not properly served. The debtor seeks to avoid a lien in favor of creditor Financial Indemnity Company ("FIC") created by service of an earnings withholding order (the "Order") on the Los Angeles County Sheriff (the "Sheriff"), as well as an order authorizing the Sheriff to turn over funds garnished pursuant to the Order in the amount of $624.10. This motion is a contested matter in which the debtor seeks relief against both FIC and the Sheriff. As a contested matter under Fed. R. Bankr. P. 9014, the motion must be served in accordance with Fed. R. Bankr. P. 7004.

Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association such as FIC is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. The debtor's proof of service shows that FIC was served "c/o Dustin Wells." However, the debtor has presented no evidence that Dustin Wells is a person described in Bankruptcy Rule 7004(b)(3) who is authorized to receive service of process. Mr. Wells is not the registered agent for service of process for FIC with the California Secretary of State.

As to the Sheriff, service on a governmental organization is governed by Bankruptcy Rule 7004(b)(6), which states that service upon a state or municipal corporation or other governmental organization, must be done by mail to the attention of a "person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." FRBP 7004(b)(6). Under Cal. Civ. Proc. Code § 416.50(a), service on a state agency may be done by delivering it to the clerk, secretary, president, presiding officer, or other head of its governing body. The debtor's proof of service does not show that the Sheriff was served to the attention of a person described in Cal. Civ. Proc. Code § 416.50.

Finally, the motion is also dismissed without prejudice because the debtor has not presented sufficient evidence of the lien to be avoided. Pursuant to Cal. Civ. Proc. Code § 706.029 the service of an earnings withholding order on the debtor's employer creates a lien. The debtor has not shown any evidence of the earnings withholding order or its service on the debtor's employer.

The court will issue a minute order.

8. 13-30690-B-11 WILLIAM PRIOR
HLC-4

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR WILLIAM V. PRIOR
8-11-14 [108]

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

The motion is granted. Pursuant to 11 U.S.C. § 1121(d)(2)(B), the 180 day-period specified in 11 U.S.C. § 1121(c)(3)is extended from August 11, to and including November 11, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

9. 12-28102-B-7 RALPH/SUZANNE EMERSON
DNL-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEE'S ATTORNEY(S)
8-11-14 [352]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of $3118.58 in fees and $381.42 in costs, for a total of $3500.00, for the period September 15, 2013, through August 6, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on October 7, 2013 (Dkt. 304), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case. The applicant now seeks compensation for services rendered and costs incurred during the period September 15, 2013, through and including August 6, 2014. As set forth in the application, the approved fees, which are a substantial discount from the actual fees and costs incurred by the applicant, are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

10. 10-46209-B-7 RYAN/STEPHANIE WAGNER — MOTION TO AVOID LIEN OF LAUFEN INTERNATIONAL INC.
CJY-2 — 8-18-14 [27]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of Laufen International, Inc., recorded in the official records of Sacramento County, Book 20100412, Page 1075, is avoided as against the real property located at 5651 Elvas Avenue, Sacramento, California.

The subject real property has a value of $370,000.00 as of the date of the petition. The unavoidable liens total $398,000.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

11. 14-22809-B-7 PETER/JUANITA ROONEY — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH EDNA WILLIAMS
JRR-1 — 8-12-14 [31]

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

The motion is granted. Pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 9019, the chapter 7 trustee is authorized to enter into the Settlement Agreement filed as Exhibit "B" to the motion. The trustee is authorized to execute all documents necessary to effectuate the settlement. Except as so ordered, the motion is denied.

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

The trustee alleges without dispute that the Settlement Agreement is fair and equitable. By entering into the Settlement Agreement, the trustee will be able to collect nearly 60% of an asset of the estate against

judgment debtor Edna Williams without resorting to the time and expense of judgment enforcement procedures or further litigation. The court finds that the compromise is a reasonable exercise of the debtor's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the Settlement Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

12. 14-26509-B-7 JACK/JANINE LARSCHEID — CONTINUED MOTION TO COMPEL ABANDONMENT
AA-2 — 7-15-14 [17]

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

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtors' interest in the day care business and personal property used therein listed on line 13 of Schedule B (Dkt. 1 at 14) and the 2002 GMC Yukon 1500 XL listed on line 25 of Schedule B (Dkt. 1 at 15)(collectively, the "Property") are deeemed abandoned by the estate. Except as so ordered, the motion is denied.

As to the debtors' interest in the day care business and personal property assets used therein consisting of toys, food, cleaning supplies, office supplies, furniture, equipment and car seats the debtors allege without dispute that the foregoing assets have a value of $1,000.00, all of which the debtors have claimed as exempt on Schedule C. As to the 2002 GMC Yukon 1500 XL, the debtors allege without dispute that it has a value of $5,510.00, and of that amount the debtors have claimed $4,850.00 as exempt, leaving little administrable equity for the estate. The chapter 7 trustee has filed a statement of non-opposition to the motion and a report of no distribution. Accordingly, the court finds that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

13. 14-24824-B-7 JOHN/JEANNETTE NOTMAN — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
ADJ-2 — 7-8-14 [29]

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

The objection is removed from the calendar. By order signed September 4, 2014, the court continued the hearing on the motion to October 21, 2014, at 9:32 a.m.

14. 14-24824-B-7 JOHN/JEANNETTE NOTMAN MOTION TO ABANDON
MDM-3 8-8-14 [43]

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

The motion is granted. Pursuant to 11 U.S.C. § 554(a), the debtors' interests in the real property located at 3802 Fourteen Mile Drive, Stockton, California (the "Fourteen Mile Drive Property"), 6124 Alexandria Place, Stockton, California (the "Alexandria Property") and 3860 Angelina Drive, Stockton, California (the "Angelina Property") are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that the value of the Fourteen Mile Drive Property is $376,000.00 and that it is encumbered by $445,000.00 in secured debt. The trustee also alleges without dispute that the potentially detrimental tax consequences to the estate that would result if the Alexandria Property were foreclosed upon during the pendency of the case make the Alexandria Property burdensome to the estate. The Fourteen Mile Drive Property is of inconsequential value and benefit to the estate.

The trustee alleges without dispute that the Alexandria Property has a value of $130,000.00 and is encumbered by $121,000.00 in secured debt. The trustee alleges that taking into account the costs of administering the equity in the Alexandria Property for the benefit of creditors, that the Alexandria Property is of inconsequential value and benefit to the estate. The trustee also alleges without dispute that the potentially detrimental tax consequences to the estate that would result if the Alexandria Property were foreclosed upon during the pendency of the case make the Alexandria Property burdensome to the estate. The Alexandria Property is of inconsequential value and benefit to the estate.

The trustee alleges without dispute that the Angelina Property has a value of $225,000.00 and is encumbered by $205,000.00 in secured debt. The trustee alleges that taking into account the costs of administering the equity in the Angelina Property for the benefit of creditors, that the Angelina Property is of inconsequential value and benefit to the estate. The trustee also alleges without dispute that the potentially detrimental tax consequences to the estate that would result if the Angelina Property were foreclosed upon during the pendency of the case make the Angelina Property burdensome to the estate. The Angelina Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

15. 14-24824-B-7 JOHN/JEANNETTE NOTMAN — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
MDM-4 — 8-8-14 [47]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 4004(b), the deadline for the chapter 7 trustee to object to the debtors' discharge is extended to and including October 15, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

16. 13-30420-B-7 STEPAN KIRCHU — CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2348 KWD-1
LEE V. KIRCHU — 3-24-14 [24]

Tentative Ruling: None.

17. 14-22470-B-11 DESMOND REYNOSO — MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
UST-2 — 7-31-14 [73]

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

The motion is granted in part, and the case is converted to one under chapter 7 pursuant to 11 U.S.C. §§ 1112(b)(4)(A) and (F). Except as so ordered, the motion is denied.

By this motion, the United States Trustee (the "UST") seeks dismissal of this chapter 11 case or, alternatively, conversion of the case to one under chapter 7. Pursuant to 11 U.S.C. § 1112(b)(1), the court, after notice and a hearing, shall convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1112(b) limits the foregoing directive in several ways:

> First, under section 1112(b)(1), the court shall not convert or dismiss the case if the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate. Section 1104(a)(2) states that "at any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States

trustee, and after notice and a hearing, the court shall order the appointment of a trustee if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor." 11 U.S.C. § 1104(a)(2).

Second, under section 1112(b)(2), the court may not convert or dismiss the case, even if the movant establishes cause, if the court finds and specifically identifies "unusual circumstances" establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes the requirements of sections 1112(b)(2)(A) and (B). Specifically, the debtor or any other opposing party in interest must establish that:

> (A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
>
> (B) The grounds for converting or dismissing the case include an act or omission of the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation - (i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.

11 U.S.C. § 1112(b)(2)(A)-(B).

11 U.S.C. § 1112(b)(4) sets forth a non-exhaustive list of examples of "cause." If one of the enumerated examples of cause set forth in 11 U.S.C. § 1112(b)(4) is proven by the movant by a preponderance of the evidence, the court must find that the movant has established cause. 7-1112 Collier on Bankruptcy § 1112.04 (16th ed. 2013).

Here, the UST alleges without dispute that there is a likelihood of substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood rehabilitation. Specifically, the UST alleges that the debtor's monthly operating reports show a small cumulative net cash increase and no payments made for principle or interest which suggest unpaid post-petition debts. Additionally, the holder of the third deed of trust on the debtor's residence has been granted relief from the automatic stay as to the debtor and the estate in order to foreclose. Furthermore, $1,757.00 net cash before payments of owed principle and interest, when there is unsecured priority debt of $561,680.00, indicates no ability to reorganize.

The trustee further alleges that all monthly operating reports have been filed late. Although the court's review of the docket indicates that the monthly operating reports for the months ending March 31, 2014 (Dkt. 17), and April 30, 2014 (Dkt. 24) were timely filed (and later amended on June 18, 2014) on April 14, 2014, and May 14, 2014, respectively, the UST is correct that the remaining monthly operating reports for May 2014, June 2014, and July 2014 have been untimely filed without excuse. In fact, the monthly operating report for July 2014, which was due on August 14, 2014, has not been filed at all.

The court finds that the UST has met his initial burden of establishing cause for dismissal or conversion of this case under 11 U.S.C. §§ 1112(b)(4)(A) and (F). Having found that cause exists to dismiss the case or convert it to one under chapter 7, the burden now shifts to the debtor to establish the requirements of 11 U.S.C. § 1112(b)(2). By failing to respond to the motion, the debtor has failed to meet this burden.

The court finds that conversion, rather than dismissal, of the case is in the best interests of the estate and its creditors. Based on both the trustee's uncontested allegations and the court's independent review of the debtor's schedules, the court finds that the debtor has significant non-exempt assets that could be administered by a chapter 7 trustee.

The court will issue a minute order.

18. 12-39020-B-7 HLG-4 — GURSHARAN BANGA — MOTION TO AVOID LIEN OF INVESTMENT RETRIEVERS, INC. 8-15-14 [40]

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

19. 14-24824-B-7 MDM-5 — JOHN/JEANNETTE NOTMAN — MOTION TO ABANDON 8-14-14 [53]

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

20. 13-32529-B-7 KJH-2 — GARY/DEBRA CAMPBELL — MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 8-7-14 [105]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves on a first and final basis compensation for the bankruptcy estate's accountant, Gabrielson & Company ("G&C"), in the amount of $3,125.50 in fees and $202.08 in expenses, for a total award of $3,327.58, for services rendered during the period of October 23, 2013, through and including August 4, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On September 26, 2013, the debtors commenced the above-captioned

bankruptcy case by filing a voluntary petition under chapter 7 (Dkt. 1). By order entered November 8, 2013 (Dkt. 35) (the "Order"), the court granted the trustee's request to employ G&C as accountant for the bankruptcy estate. The Order does not specify an effective date of employment, so G&C's employment was effective November 8, 2013. The application for an order authorizing G&C's employment was filed on October 25, 2013 (Dkt. 28). This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving G&C's employment retroactive to October 23, 2013, the first date on which G&C rendered services to the trustee according to the attached billing records (Dkt. 107). The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988)(extraordinary or exceptional circumstances to justify retroactive employment). In this case, the court grants an effective date of October 23, 2013.

In the absence of an objection from any party in interest, the court finds that, as set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

G&C shall submit an amended form of employment order which is identical to the Order, but which shall in addition specify an effective date of employment of October 23, 2013. Upon entry of the amended employment order, the court will issue a minute order granting the motion as set forth above.

21. 14-26993-B-7 SONIA COCHRANE
UST-1

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
7-23-14 [18]

Tentative Ruling: This motion is unopposed. Because the debtor is pro se, the court issues the following abbreviated tentative ruling.

The motion is granted. The debtor is denied a discharge in bankruptcy case no. 14-26993-B-7 pursuant to 11 U.S.C. § 727(a)(8).

The United State Trustee alleges without dispute that the debtor was granted a discharge on April 5, 2010, under 11 U.S.C. § 727 in a case commenced on December 23, 2009 (case no. 09-48122-C-7). Accordingly, 11 U.S.C. § 727(a)(8) provides that the debtor cannot receive a discharge in this case because she has obtained a discharge in a previous case which was commenced within eight years of this case. 11 U.S.C. § 727(a)(8). Under Federal Rule of Bankruptcy Procedure 7001(4), an objection to discharge under 11 U.S.C. § 727(a)(8) does not require an adversary proceeding.

The court will issue a minute order.

22. 13-34394-B-7 VERONICA JIMENEZ
DNL-1

MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY
8-12-14 [24]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ Desmond, Nolan, Livaich & Cunningham ("DNLC"), effective July 31, 2014, as counsel for the chapter 7 trustee, on the terms and for the purposes set forth in the motion and attached Flat Fee Agreement for Legal Services (Dkt. 27, pp.2-3). Pursuant to Fed. R. Bankr. P. 2016 and 11 U.S.C. § 330(a), the court authorizes compensation for DNLC in the amount of a $2,500.00 flat fee, payable as a chapter 7 administrative expense upon completion of the tasks for which employment is authorized. Except as so ordered, the motion is denied.

The court finds that DNLC is a disinterested person as that term is defined in 11 U.S.C. § 101(14). The court finds that the approved fees are reasonable compensation for actual and necessary services.

The court will issue a minute order.

23. 13-34394-B-7 VERONICA JIMENEZ
DNL-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH VERONICA JIMENEZ
8-12-14 [29]

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

The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the terms set forth in the Compromise Agreement attached as Exhibit "A" to the motion (Dkt. 32, pp.2-4) (the "Agreement"). Except as so ordered, the motion is denied.

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

The trustee alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will resolve a dispute between the trustee and debtor regarding the nature of funds currently held in an investment account with Edward

Jones. The trustee asserts that the probability of his success in litigating the matter is unknown and will depend on fact-intensive testimony regarding the intent and conduct of both the debtor and her mother with respect to the funds as well as discovery in tracing the funds. The trustee further asserts that successful litigation would likely only generate further administrative claims but not result in a greater return to non-administrative creditors. By entering into the Agreement, the trustee asserts that the expense, delay, and inconvenience associated with litigating the matter will be avoided and will be in the paramount interest of the creditors of the estate. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

24.	14-26332-B-7 ASF-1	NYACK BAKARI	TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 8-7-14 [16]

Tentative Ruling: The debtor's opposition is overruled. The motion is granted, and the case is dismissed pursuant to 11 U.S.C. § 707(a).

By this motion, the chapter 7 trustee seeks dismissal of this case on the grounds that the debtor failed to appear and testify at the regularly scheduled and duly noticed meeting of creditors held on August 6, 2014, pursuant to 11 U.S.C. § 341(a). The court's review of the docket indicates that the first meeting of creditors was held on July 23, 2014, at 2:00 p.m., at which the debtor failed to appear. The debtor also failed to appear at the continued meeting of creditors held August 6, 2014, at 2:00 p.m. The foregoing constitutes "cause" to dismiss the case pursuant to 11 U.S.C. § 707(a).

The court acknowledges that the debtor has filed two separate oppositions to this motion, one on August 15, 2014 (Dkt. 19) and another on September 5, 2014 (Dkt. 22). Neither opposition is persuasive. First, in the August 15, 2014 opposition, the debtor provides no explanation as to why she opposes the motion. It appears that she has simply signed and dated the opposition in several places, but left blank the space reserved for her to provide an explanation for her opposition.

The opposition filed September 5, 2014, is unpersuasive for two reasons. First, it was not timely filed. Pursuant to the Notice of Trustee's Motion to Dismiss for Failure to Appear at Section 341(a) Meeting of Creditors filed August 7, 2014 (Dkt. 17), the debtor was instructed to file opposition no later than fourteen (14) days prior to today's date. Fourteen days prior to today's date was August 26, 2014. The second opposition was filed on September 5, 2014, only four (4) days prior to the today's date.

Even if the second opposition were timely filed, the court would still find it unpersuasive. The debtor has now failed to attend both the first meeting of creditors and the continued meeting of creditors. Her only

explanation is that she was not informed by her bankruptcy petition preparer of the need to attend the meeting of creditors. What the debtor fails to realize is that, upon the filing of a bankruptcy petition, a debtor has certain duties under the Bankruptcy Code which must be accomplished in order for her to stay in bankruptcy, one of which is attendance at the Section 341 meeting of creditors. Failing to appear at the meeting of creditors simply because she was not informed of the need to attend is insufficient. Clients are bound by the actions and omissions of their attorney. Link v. Wabash R. Co., 370 U.S. 626, 633-634, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)("Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent."). This principle was re-affirmed by the U.S. Supreme Court in Pioneer Investment Services Co. v. Brunswick Associated Ltd. Partnership, 507 U.S. 380, 396-397, 113 S.Ct. 1489, 123 L.Ed2d 74 (1993). Accordingly, the opposition is overruled, the motion is granted, and the case is dismissed pursuant to 11 U.S.C. § 707(a).

The court will issue a minute order.

25. 14-26439-B-7 LORRAINE DENKE — MOTION TO AVOID LIEN OF GE MONEY BANK
DMB-1 — 8-4-14 [9]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of GE Money Bank, recorded in the official records of Lassen County, Document Number 2011-00718, is avoided as against the real property located at 465-655 County Road, A3, Janesville, California 96114 (the "Property").

The Property had a value of $130,000.00 as of the date of the petition. The unavoidable liens total $181,948.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which she exempted $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

26. 13-34046-B-7 JB-2 — JASON/SHANNON WONG — MOTION FOR COMPENSATION FOR MICHAEL R. GABRIELSON, ACCOUNTANT
8-5-14 [88]

Tentative Ruling: The motion is denied without prejudice.

By this motion, Gabrielson & Company (the "Applicant"), which is currently employed as accountant for the chapter 7 trustee in the above-captioned bankruptcy case, seeks first and final compensation in the total amount of $2,727.27 for services rendered and costs incurred during the period of April 21, 2014, through and including August 3, 2014. The motion is denied without prejudice because the Applicant has failed to satisfy the requirements for an application for compensation or reimbursement as set forth in Federal Rule of Bankruptcy Procedure 2016.

Federal Rule of Bankruptcy Procedure 2016 provides that "[A]n application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required." Fed. R. Bankr. P. 2016(a) (emphasis added). The requirements of Federal Rule of Bankruptcy Procedure 2016(a) specifically apply to applications for compensation for services rendered by attorneys and accountants. Here, the Applicant does not address the foregoing requirements in its application for compensation, and there has been no declaration or other documentation filed in support thereof aside from copies of the Applicant's billing statements (Dkt. 90). Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

27. 12-33556-B-7 BHS-3 — WILLIAM/FELICIA LASSITER — MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEE'S ATTORNEY
8-4-14 [57]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of $7,365.00 in fees and $82.52 in expenses, for a total of $7,447.52, for the period of January 17, 2013, through and including August 4, 2014, payable as a chapter 7

administrative expense. The applicant's request for additional compensation of $400.00 is denied. Except as so ordered, the motion is denied.

By order entered February 7, 2013 (Dkt. 29), the court authorized the chapter 7 trustee to retain the applicant as general bankruptcy counsel in this case. The applicant's employment was effective January 17, 2013. The applicant now seeks compensation for services rendered and costs incurred during the period of January 17, 2013, through and including August 4, 2014. The requested fees and costs are approved in full with the exception of the $400.00 the applicant seeks for completing the instant motion, responding to possible opposition to the motion, and appearing at the hearing on this matter. According to the attached billing statements (Dkt. 61), the applicant has already charged $630.00 for 1.80 hours worked in preparing the fees application. Additionally, no opposition to this motion has been filed and the matter is being disposed of without oral argument. It will not be called for hearing on September 9, 2014, at 9:32 a.m. and therefore an appearance by the applicant on this matter is unnecessary. Accordingly, the applicant's request for additional compensation of $400.00 is denied. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

28. 14-22660-B-7 LOD/SHEILA SEALE — MOTION TO SELL
MHK-2 — 8-11-14 [27]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the estate's interest in real property located at 5820 Keyntel Street, Citrus Heights, California 95621 (the "Property") to Lod Seale and Sheila Mae Seale for $50,000.00 cash in an "as is" condition on the terms and conditions set forth in the Agreement for Sale of Estate's Equity in Residence attached as Exhibit "A" to the motion (Dkt. 30, pp.2-5), provided that the court's ruling does not authorize sale of the Property to any purchaser not approved by the court and does not authorize sale of the Property free and clear of liens. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

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

The trustee has not made a request for a finding under 11 U.S.C. § 363(m), and the court makes no such finding.

The trustee shall submit a proposed order which conforms to the foregoing ruling.

29. 12-27767-B-11 DOMINIQUE ENGEL
MLA-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ABDALLAH LAW GROUP, P.C. FOR MITCHELL L. ABDALLAH, DEBTOR'S ATTORNEY(S)
8-26-14 [258]

Tentative Ruling: This is an improperly filed motion under LBR 9014-1(f)(2). The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The debtor has failed to give parties in interest proper notice of the motion. Federal Rule of Bankruptcy Procedure 2002(a) provides that all parties in interest are required to receive at least twenty-one (21) days' notice by mail of a request for compensation or reimbursement of expenses if the request exceeds $1,000.00. Fed. R. Bankr. P. 2002(a)(6). Twenty-one days prior to today's date was August 19, 2014. The motion was filed on August 26, 2014, and the proof of service (Dkt. 263) indicates that parties in interest were served by mail on that same date with the motion, notice of hearing, and supporting documents. Parties in interest were only provided fourteen (14) days' notice of this matter. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

30. 14-26171-B-7 LARRY HARTLEY

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-6-14 [18]

Tentative Ruling: The motion is granted in part and denied in part. The trustee's request to dismiss the case is denied. The trustee's request to extend the deadline for the trustee to object to the debtor's discharge pursuant to 11 U.S.C. § 727 or to file a motion under Federal Rule of Bankruptcy Procedure 1017(e) to dismiss this case pursuant to 11 U.S.C. § 707(b) is granted, and such deadlines are extended through and including October 26, 2014.

The trustee filed this motion in response to the debtor failing to appear at the regularly scheduled and duly noticed meeting of creditors held August 6, 2014. The court construes the trustee's motion as a request to dismiss this case pursuant to 11 U.S.C. § 707(a)(1) for cause, including unreasonable delay by the debtor that is prejudicial to creditors. As the moving party, the trustee carries the burden of persuasion. In re Hickman, 384 B.R. 832, 841 (9th Cir. BAP 2008). Here, the court's review of the docket indicates that the meeting of creditors was continued to August 27, 2014, and that the debtor appeared at that meeting. The trustee has failed to explain what, if any, prejudice creditors suffered as a result of the debtor failing to appear at the meeting of creditors held August 6, 2014. The court finds that the trustee has failed to satisfy his burden of proving the existence of cause to dismiss this case

under 11 U.S.C. § 707(a). Accordingly, the trustee's request to dismiss the case is denied.

The trustee's request for an extension of the deadline to object to the debtor's discharge pursuant to 11 U.S.C. § 727 or to file a motion under Federal Rule of Bankruptcy Procedure 1017(e) to dismiss this case pursuant to 11 U.S.C. § 707(b) is granted. When a request for an enlargement of these deadlines is made before the time has expired, as it was here, the court may enlarge time for cause shown. Fed. R. Bankr. P. 1017(e) and 4004(b). Here, the court finds that the debtor's failure to appear at the meeting of creditors held August 6, 2014, constitutes sufficient cause for an extension of the aforementioned deadlines through and including October 26, 2014.

The court will issue a minute order.

31. 12-27980-B-7 CHRISTOPHER/TERESA BOLEY — MOTION TO ABANDON
TAA-1 — 7-23-14 [39]

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

The motion is granted in part. Pursuant to 11 U.S.C. § 554(a), the estate's interest in the complaint for accounting of rents and injunctive relief filed by debtor Christopher Boley ("Boley") in the Sacramento County Superior Court (case number 34-2013-00142936), a copy of which has been attached to the motion as Exhibit "1" (Dkt. 41) (the "Lawsuit") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that Lawsuit is being aggressively defended by the defendant, Suzanne Jones ("Jones"). The trustee further alleges without dispute that he has been in contact with the attorneys for both Boley and Jones, and he believes that the matter will require extensive litigation if a settlement is not reached. While some efforts toward a settlement have been made, no offer is currently pending which would result in a significant recovery for the estate after consideration of costs of litigation and administration of the estate. Based on the foregoing, the court finds that the Lawsuit is burdensome to the estate and of inconsequential value and benefit to the estate. 11 U.S.C. § 554(a).

The court will issue a minute order.