UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 18, 2017 at 10:00 a.m.

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 23, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 9, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 16, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

1. 17-23142-A-7 MISTY CLARK — OBJECTION TO EXEMPTIONS
SLC-1 — 7-12-17 [25]

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtor's Cal. Civ. Proc. Code § 704.730(a)(3)(B) $175,000 exemption claim of the debtor, contending that she has not provided evidence that she was physically or mentally disabled within the meaning of section 704.730(a)(3)(B).

The debtor is a high school teacher and was working as such on the petition date, May 8, 2017. Dockets 32 & 33.

In January 2013, the debtor discovered she had cancer. She had surgeries performed in February and June 2013. In March 2016, the debtor learned that the cancer had metastasized to her bones, liver, and lungs, making it a stage IV cancer. She had further surgeries in May 2016. Due to a worsening of her condition, in March 2017 the debtor started taking Ibrance, a medication with harsh and debilitating side effects, prescribed to patients with last stage cancer. The debtor nonetheless wanted to complete her year of teaching for the sake of her students. Dockets 32 & 33.

In April 2017, the debtor started working half days, only in the mornings, as her pain and exhaustion did not allow her to teach full days. While teaching, she also spent most time sitting because she tired easily. She used her accrued sick leave to have a substitute teacher teach her classes in the afternoons. On May 2, 2017, the school district approved the debtor's leave of absence, through June 2018. The debtor filed this case on May 8, 2017. Dockets 32 & 33.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"*[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.*"

This objection is timely as it was filed on July 12, 2017, within 30 days after the June 16, 2017 conclusion of the meeting of creditors. Docket 25.

Fed. R. Bankr. P. 4003(c) provides that:

"*In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.*" See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re

Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Proc. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

Further, the court cannot force the trustee to prove a false negative. She cannot prove that the debtor does not qualify for the disability exemption.

Rights to exemptions of property are determined as of the date the petition is filed. In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

Cal. Civ. Proc. Code § 704.730 provides that:

"(a) The amount of the homestead exemption is one of the following:

"(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

"(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

"(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

"(A) A person 65 years of age or older.

"(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

"(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

"In order to qualify for disability benefits under the [Bankruptcy] Act, a claimant must show that he or she is disabled and, as a result of the disability, is unable to engage in 'substantial gainful activity.' Lackey v. Celebrezze, 349 F.2d 76, 77 (4th Cir.1965)."

In re Rostler, 169 B.R. 408, 412 (Bankr. C.D. Cal. 1994).

As Cal. Civ. Proc. Code § 704.730(a)(3)(B) uses the same qualifying language as under the Act when determining a disability, this court will look to cases under the Act for guidance in interpreting the meaning of "substantial gainful employment."

In deciding what constitutes substantial gainful activity under the Bankruptcy Act, the Ninth Circuit has held that:

"Specifically, an activity must be both 'substantial' and 'gainful.' See 20 C.F.R. § 416.972 (1993). Work activity is 'substantial' if it 'involves doing significant physical or mental activities.' Id. at § 416.972(a) (1993). It is 'gainful' if it is 'the kind of work usually done for pay or profit, whether or not a profit is realized.' Id. at § 416.972(b) (1993). The claimant's activities need only be of the type that normally results in pay or profit. Conceivably, the claimant's activities may be gainful even if the claimant does not earn income."

Corrao v. Shalala, 20 F.3d 943, 946-47 (9th Cir. 1994).

The court is persuaded that the debtor has met her burden of persuasion and established her entitlement to the exemption. Although the debtor was employed as of the May 8 petition date, her employment was not substantial. When she filed this case, the debtor was exhibiting substantial symptoms consistent with a disability, including pain, fatigue, exhaustion, and inability to stand or move while teaching.

The debtor was also unable to spend full days teaching. In order to complete the school year, for the sake of her students, the debtor was using her accrued sick leave to have a substitute teacher teach her classes in the afternoons.

Further, the debtor's disability and inability to engage in further employment with the school district was recognized by the school district prior to the petition date. The school district approved a leave of absence for the debtor on May 2, 2017. The terminal nature of the leave is demonstrated by the leave's long duration, from August 2017 through June 2018.

And, the filing of this case, on May 8, was only two weeks from the end of the school year.

Given the debtor's stage IV cancer, her taking medication with debilitating side-effects, her part-time work, the pain and suffering being experienced, her difficulty in working more than part-time, the school district's recognition of her disability, and the span of just two weeks between the petition date and the end of the school year, the court concludes the debtor was physically disabled, as a result of which she was unable to engage in *substantial* gainful employment as of the petition date. Accordingly, the debtor is entitled to the exemption. The objection will be overruled.

2. 09-30470-A-7 SHAN FANG
SGO-1

MOTION FOR SANCTIONS
7-17-17 [48]

Tentative Ruling: The motion will be denied.

Creditor Ocean Queen USA, Inc., moves for sanctions in the amount of $10,000 against Shan Fang, the chapter 7 debtor, and Peter Macaluso, attorney for the debtor. The motion argues that sanctions are appropriate under Federal Bankruptcy Rule 9011 with regard to the debtor's filing of a motion for contempt against Ocean Queen. See Docket 19.

The court takes judicial notice of its ruling on the motion for contempt posted for the July 21, 2017 hearing (Docket 52 at 3) and incorporates by reference that ruling here. Fed. R. Evid. 201(c)(1); Docket 52 at 3.

To the extent the movant is seeking attorney's fees as sanctions under Fed. R. Bankr. P. 9011, such request will be denied. The movant argues that the debtor's motion for contempt "violates the provisions of Federal Rules of Bankruptcy Procedure Rule 9011(b)." Docket 49 at 2.

Fed. R. Bankr. P. 9011(b), the Federal Rules of Bankruptcy Procedure equivalent of Rule 11 in the Federal Rules of Civil Procedure, prescribes that:

(b) By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,1]--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

This motion seeks sanctions for reasons that are identical to those set forth in Ocean Queen's opposition to the debtor's motion for contempt (Docket 35). The memorandum of points and authorities filed concurrently with this motion states as follows: "The law and evidence in support of sanctions against Debtor and Debtor's counsel are as set forth in the opposition papers previously filed by Stephen G. Opperwall as Doc 33 through Doc 42." Docket 49 at 2. The court has already considered and rejected the arguments for sanctions set forth in the contempt opposition pleadings. The July 21 ruling on the motion for contempt specifically states that "[t]he parties shall bear their own fees and costs." Docket 52 at 3. In sum, the motion for sanctions is unpersuasive as it relies entirely on arguments that have been previously adjudicated by the court.

The July 21 ruling applies and is incorporated here. See Docket 52. This motion will be denied.

3. 16-26175-A-7 JEFFERY NUXOLL — MOTION TO SELL
DMW-2 — 8-18-17 [25]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $429,000 the estate's interest in a residential real property in El Dorado Hills, California to David Regan and Ashley Regan. The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property. The debtors listed the property in their petition valued at $369,000. The property is subject to a single lien in the amount of $315,000.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

4. 17-24475-A-7 ARMANDO CHAVEZ — MOTION FOR CONTEMPT AND FOR SANCTIONS
MKM-1 — 8-17-17 [17]

Tentative Ruling: Given the movant's request to dismiss the motion (Docket 24), the motion will be dismissed subject to hearing from the respondent who filed opposition to the motion prior to the request for dismissal.

5. 17-22988-A-7 BRIAN ANDERSON — MOTION TO SELL AND TO APPROVE COMPENSATION FOR REALTOR
SCB-4 — 8-21-17 [46]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $229,690.00 the estate's interest in a residential real property in Sacramento, California to Valencia Property Pros, LLC. The trustee also asks for approval of the payment of the 5% real estate broker's commission and asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property. The property was appraised and listed at $170,000.00. The property is subject to a single mortgage lien in the amount of $89,300.00. The seller received more than 20 offers to purchase the property and accepted the highest bid, which was almost $60,000.00 more than the listed price.

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

than in the ordinary course of business. The sale will generate approximately $97,536.70 in proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will approve the payment of the real estate commissions to Reed Block of Reed Block Reality. Docket 31. The court will waive the 14-day period of Rule 6004(h).

FINAL RULINGS BEGIN HERE

6. 10-36404-A-7 JACOB ENNI
CLH-1
VS. CENTRAL STATE CREDIT UNION

MOTION TO
AVOID JUDICIAL LIEN
8-21-17 [30]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Central State 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 and was not addressed solely to an officer of the respondent. Docket 34. It was addressed to "Officer, a managing or general agent or other agent authorized by appointment or by law to receive service of process." Docket 34.

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

The court does not have evidence that any of the exceptions of Rule 7004(h) are applicable.

And, while the debtor served the respondent's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Accordingly, the motion will be dismissed.

Finally, the debtor amended Schedule C on August 2, 2017, to add an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. See Docket 25. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The debtor has not afforded parties in interest such an opportunity.

7. 14-24008-A-7 CALVIN CHANG
ASF-2

MOTION TO
APPROVE COMPENSATION OF ACCOUNTANT
8-15-17 [75]

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 $1,582.50 in fees and $82.23 in expenses, for a total of $1,664.73. This motion covers the period from June 12, 2014 through August 12, 2017. The court approved the movant's employment as the estate's accountant on June 17, 2014. In performing its services, the movant charged hourly rates of $345 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, preparing estate tax returns and discussing tax issues with the trustee.

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

8. 16-21112-A-7 KENDALL BROOKS — OBJECTION TO CLAIM
DNL-11
VS. AVCON CONSTRUCTORS, INC. — 8-10-17 [88]

Final Ruling: The objection will be dismissed without prejudice because service of the objection did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The trustee served the objection on Avcon Constructors, Inc. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 92.

9. 17-24019-A-7 GARY SMITH — MOTION TO AVOID JUDICIAL LIEN
MMM-1
VS. CAVALRY INVESTMENTS, L.L.C. — 8-21-17 [43]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent, Cavalry Investments, L.L.C. See Fed. R. Bankr. P. 7004(b)(3). And, while the debtor served the respondent's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 47. Accordingly, the motion will be dismissed.

Finally, the abstract of judgment does not identify the respondent as the judgment lien holder. The plaintiff in the lawsuit that purportedly led to the subject judicial lien is not Cavalry Investments, L.L.C. It is Fireside Thrift Co. The motion does not explain the discrepancy. Dockets 43 & 45. Also, the supporting declaration mentions yet another creditor, GE Capital Retail Bank.

Docket 45 at 2. The court cannot ascertain GE's role in this proceeding.

10. 10-27435-A-7 THOMAS GASSNER — OBJECTION TO EXEMPTIONS
DNL-5 — 3-31-17 [90]

Final Ruling: The hearing on this objection has been continued to November 6, 2017 at 10:00 a.m. Docket 108.

11. 10-49842-A-7 DANIEL/SUSAN KAESTNER — MOTION TO APPROVE COMPROMISE
SCB-3 — 8-7-17 [43]

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 various defendants on the other hand, in a multi-district medical device products liability litigation. The claims were precipitated by the implant of a mesh device on Mrs. Kaestner, from which she developed medical issues.

The settlement was reached pursuant to a settlement determination process involving a point system, reviewed by the court presiding over the litigation. The court appointed a special master to assess settlements in the litigation. The master calculated the settlement value of the subject claims based on various objective factors involving Mrs. Kaestner and the medical device.

Under the terms of the compromise, the defendants will pay $134,810.56 to the estate, in full satisfaction of the claims. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately $116,038.79, $53,826.24 from which will be paid to the estate's special counsel as attorney's fees and costs.

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 difficulties with establishing the cause of Mrs. Kaestner's medical issues, in light of their commonality; given the objectivity and neutrality of the process utilized to calculate the settlement

value of the claims; given the defendants' denial of the complaint's allegations; given that there are only less than 20 similar cases that have been tried to a jury verdict; and given the inherent costs (estimated at up to $500,000), 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.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

12. 10-49842-A-7 DANIEL/SUSAN KAESTNER — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
SCB-4 — 8-7-17 [50]

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 Miller Firm, L.L.C. and Armstrong & Guy Law Offices, L.L.C., special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $51,228.01 in fees and $2,598.23 in expenses, for a total of $53,826.24. The services cover the period from September 2011 through the present. The movant's employment as special counsel for the estate was approved on May 11, 2016. Docket 40. The requested compensation is based on a 40% contingency compensation arrangement.

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

The movant's services consisted, without limitation, of: reviewing over 100,000 pages of documents, analyzing various documents, deposing potential witnesses such as doctors and defendant executives, retaining experts, preparing them for depositions, prosecuting and defending various motions such as summary judgment motions, negotiating settlement, and preparing settlement agreement.

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.

This ruling is not authorizing the payment of any other fees or costs associated with the litigation. The trustee has not sought payment

authorization as to fees or costs associated with the litigation, other than what is addressed by this ruling.

13. 15-25950-A-7 MARY DUNCAN
PLG-3
VS. DISCOVER BANK

AMENDED MOTION TO AVOID JUDICIAL LIEN
8-18-17 [40]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $19,294.23 on February 1, 2012. The abstract of judgment was recorded with San Joaquin County on May 2, 2012. That lien attached to the debtor's interest in a residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $106,372 as of the petition date. Docket 26, Amended Schedule A. The unavoidable liens totaled $174,463 on that same date, consisting of a single mortgage in favor of Nationstar Mortgage. Dockets 37 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $25,714 in Amended Schedule C. Dockets 37 & 26.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

14. 17-23553-A-7 NATHANIEL WALKER
RAS-1
DEUTSCHE BANK NATIONAL TRUST CO. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-15-17 [16]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the

automatic stay as to a real property in Stockton, California. The movant has produced evidence that the property has a value of $311,500 ($308,000 in Schedule A/B) and it is encumbered by claims totaling approximately $320,027. Docket 18, Ex. B. The movant's deed is the only mortgage against the property and secures a claim of approximately $316,027.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 17, 2017.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

15. 17-24556-A-7 CHARLES GRAHAM — MOTION FOR RELIEF FROM AUTOMATIC STAY
MEL-1 — 8-17-17 [13]
BANK OF AMERICA, N.A. VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2016 Smart vehicle. The movant has produced evidence that the vehicle has a value of $9,747 and its secured claim is approximately $17,667. Docket 15.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on August 23, 2017. And, the movant

already has possession of the vehicle. It was obtained pre-petition, in June 2017.

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

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

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

16. 17-22758-A-7 LYNN/VONDA YETTNER — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 8-3-17 [13]

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

The motion will be granted in part and dismissed in part.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay with respect to a 2009 Ford F150. The vehicle has a value of $14,100 and its secured claim is approximately $22,901.

The trustee filed a statement of nonopposition on August 14, 2017.

Given the entry of the debtor's discharge on September 5, 2017, the automatic stay has expired as to the debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to the debtor.

As to the trustee, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived.

17. 15-23164-A-7 JF MCCRAY PLASTERING, INC.
DNL-9
MOTION FOR ADMINISTRATIVE EXPENSES
8-2-17 [100]

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

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability for the 2017 tax year as follows: $900 to the California Franchise Tax Board.

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 4, 2010. The tax liability in question was incurred in 2016 and 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

18. 17-22371-A-7 PAUL NGUYEN
AVN-2
VS. AMERICAN EXPRESS BANK, F.S.B.
MOTION TO AVOID JUDICIAL LIEN
7-28-17 [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 respondent creditor 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.

A judgment was entered against the debtor in favor of American Express Bank, FSB for the sum of $33,674 on December 13, 2010. The abstract of judgment was recorded with Sacramento County on February 25, 2011. That lien attached to the debtor's interest in a residential real property in Elk Grove, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $400,000 as of the petition date.

Docket 51, Exhibit 2. The unavoidable liens totaled $290,522 on that same date, consisting of a first mortgage in favor of Specialized Loan Servicing for $278,284 and a second mortgage in favor of Golden 1 Credit Union for $12,238. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Docket 1.

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.

The sum of the unavoidable liens and the exemption claim is $390,522, leaving $9,478 in equity available to satisfy the subject judicial lien.

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 except for $9,478. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of $24,196 ($33,674 minus $9,478 of available equity). Its fixing to that extent will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

19. 17-21973-A-7 JOSE/MARIA PIMENTEL — MOTION TO EMPLOY
SSA-2 — 8-14-17 [76]

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 to employ Bob Brazeal of Remax Executive as a real estate broker for the estate. Mr. Brazeal will assist the estate with the valuing, marketing, and selling real property located in Tracy, California. The proposed compensation for Mr. Brazeal is six percent (6%) commission of the gross sales price of the property.

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. Mr. Brazeal 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.

20. 17-24783-A-7 DIANE BLAZEJOVSKY
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-17-17 [13]

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

The motion will be granted.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay with respect to a 2007 Audi A4. The vehicle has a value of $8,475 and its secured claim is approximately $8,574.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a statement of nonopposition on September 7, 2017. Further, the debtor has not made two pre-petition and one post-petition payments to the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

21. 12-37490-A-7 ROBERT/DONNA ROY
RWH-2
VS. AMERICAN EXPRESS CENTURION BANK

MOTION TO
AVOID JUDICIAL LIEN
7-31-17 [27]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of American Express Centurion Bank the sum of $25,339.26 on September 28, 2011. The abstract of judgment was recorded with Sacramento County on January 12, 2012. That lien attached to the debtor's interest in a residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $92,100.00 as of the petition date. Docket 1. The unavoidable liens totaled $96,184.00 on that same date, consisting of a single mortgage in favor of GMAC. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $1.00 in the first amended Schedule C. Docket 25.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

22. 17-23190-A-7 RANDY/JANEAN WRIGHT — MOTION TO DISMISS CASE 8-10-17 [25]
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 respondent creditor 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 U.S. Trustee seeks dismissal of this case under 11 U.S.C. § 707(b)(1), (2) and (3) contending that there is a presumption of abuse, or in the alternative, that the case was filed in bad faith.

Section 707(b)(2)(A)(I) of title 11 of the United States Code requires the court to presume that a debtor's Chapter 7 filing is abusive, if the debtor's current monthly income reduced by amounts determined under clauses (ii), (iii), and (iv) of 11 U.S.C. § 707(b)(2)(A), and multiplied by 60 is not less than the lesser of –

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $7,475, whichever is greater; or

(II) $12,475.

See 11 U.S.C. § 707(b)(2)(A)(I); 11 U.S.C. § 104(b); 78 F.R. 12089-1.

In other words, if after deducting all allowable expenses from a debtor's current monthly income, the debtor has less than $124.58 per month in monthly

net income (*i.e.*, less than $7,475 to fund a 60-month plan), the filing is not presumed abusive. If the debtor has monthly disposable income of more than $207.92 (*i.e.*, more than $12,475 to fund a 60-month plan), the filing is presumed abusive

Finally, if the debtor has between $124.58 and $207.92 per month, the case will be presumed abusive if that amount, when multiplied by 60 months, will pay 25% or more of the debtor's non-priority unsecured debts.

Section 707(b)(3)(A) of title 11 of the United States Code states that when the presumption of abuse described in paragraph (2)(A)(I) does not arise or is rebutted, the court shall consider whether the debtor filed the petition in bad faith.

See 11 U.S.C. § 707(b)(3)(A); 11 U.S.C. § 104(b); 78 F.R. 12089-1.

Here, the debtors completed, executed under penalty of perjury, and filed a "Chapter 7 Means Test Calculation" (Official Form 122A-2) in this case. In their means test, the debtors admitted that they have $1,911.19 in "monthly disposable income. 11 U.S.C. § 707(b)(2)." Docket 1. The presumption of abuse arises in this case because the debtors' "monthly disposable income" exceeds the $214.17 threshold under the Bankruptcy Code. Further, the debtors have not provided details about "special circumstances" that would rebut the presumption of abuse. See 11 U.S.C. § 707(b)(2)(B).

Further, there is evidence that the debtors filed this chapter 7 case in "bad faith" constituting of actual abuse. While the debtors' means test showed $1,911.19 in monthly disposable income, the debtors' Schedule J in this case showed a substantially lower amount of monthly net income, $62.13, a $1,849.06 shortfall. Docket 1. The Office of the United States Trustee sent letters and emails to the debtors, numerous times, requesting information and documents in an effort to determine (1) the accuracy and veracity of the debtors' asserted "current monthly income" for the means test and monthly net income in Schedule J; (2) the actual amount of tax debt owing to the IRS, if any; and (3) the possibility of an undisclosed asset, a mobile home. See Docket 29, Exs. 2-3. The debtors did not produce information or documents in response to such requests, even though they admitted in an email to the trustee's office that they had such information and documents available. See Docket 29, Ex. 4; see also Docket 27, Decl. of JoAnne David, Office of the United States Trustee.

In light of the forgoing, the motion will be granted under section 707(b)(2) and (b)(3). The case will be dismissed.