

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 1, 2013 at 9:32 A.M.

PLEASE TAKE NOTE: Matters with tentative rulings on this calendar and which are associated with In re ZF In Liquidation, LLC, case no. 12-37961-B-11 (matter 45), will not be called for hearing before 11:00 a.m.

1. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, CONTINUED MOTION TO DISMISS
 [12-2686](#) LLC HKS-1 ADVERSARY
 C&S WHOLESALE GROCERS, INC. V. 8-19-13 [[53](#)]
 DELANO ET AL

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

The motion is continued to November 26, 2013, at 9:32 a.m.

The motion is continued for the following reasons:

1.) To allow the motion to be heard after the hearing on any motion to dismiss for lack of subject matter jurisdiction that may be filed.

2.) To allow the court additional time to analyze the issues raised in the motion.

2. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, CONTINUED MOTION TO DISMISS
 [13-2250](#) LLC HKS-1 ADVERSARY
 C&S WHOLESALE GROCERS, INC. V. 8-19-13 [[22](#)]
 DELANO ET AL

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

The motion is continued to November 26, 2013, at 9:32 a.m.

The motion is continued for the following reasons:

1.) To allow the motion to be heard after the hearing on any motion to dismiss for lack of subject matter jurisdiction that may be filed in adversary proceeding number 12-2686-B.

2.) To allow the court additional time to analyze the issues raised in the motion.

3. [13-25154](#)-B-7 JAMES RILEY MOTION FOR SUMMARY JUDGMENT OR
[13-2168](#) SUMMARY ADJUDICATION
RYBOLT V. RILEY, IV 8-29-13 [[28](#)]

Tentative Ruling: The motion is denied.

The defendant debtor seeks summary judgment that the plaintiff, Courtney Rybolt, take nothing by her complaint. Federal Rule of Civil Procedure 56, made applicable to this proceeding by Bankruptcy Rule 7056, provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, admissions on file, and declarations, if any, show that there is "no genuine issue of fact and that the moving party is entitled to judgment as a matter of law." "The initial burden of showing the absence of a material factual issue is on the moving party. Once that burden is met, the opposing party must come forward with specific facts, and not allegations, to show a genuine factual issue remains for trial." DeHorney v. Bank of America N.T.&S.A., 879 F.2d 459, 464 (9th Cir. 1989). See, also, Celotex Corp. v. Catrett, 477 U.S. 317, 323-324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265, 278-280 (1986).

The court cannot grant summary judgment based upon the fact of non-opposition by another party in the adversary proceeding. Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993) (summary judgment cannot be granted based upon the failure to file opposition under a local rule); In re Lenard, 140 B.R. 550, 555 (D. Colorado 1992) (discussing the advisory notes to F.R.C.P. 56(e) which provide "Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented."). Thus, even if no response to the motion is filed, this court must "independently determine from the record whether summary judgment is proper." Lenard, 140 B.R. at 555.

The plaintiff seeks a determination that an award of child support arrears in the amount of \$1011.75 and three awards of attorney's fees in the aggregate amount of \$5850.00, arising out of Sacramento County Superior Court Case number 10FL05692 and payable to the plaintiff by the debtor, are not dischargeable pursuant to 11 U.S.C. § 523(a)(5). The debtor argues that the foregoing amounts are dischargeable in his bankruptcy case because it is undisputed that the debtor and the plaintiff are not and were not ever married, citing In re Reines, 142 F.3d 970, 972 (7th Cir. 1998).

However, § 523(a)(5), which provides that debts for domestic support obligations are not dischargeable, is not as narrowly construed as the debtor argues. The term "domestic support obligation" is defined in 11 U.S.C. § 101(14A). It means a debt that accrues before, on, or after the date of the order for relief that is owed to or recoverable by a spouse, former spouse or child of the debtor "or such child's parent, legal guardian or responsible relative." In addition, the debt must be in the nature of alimony, maintenance or support of such spouse, former spouse or child of the debtor or such child's parent without regard to

whether such debt is expressly so designated. The debt must be established by the provisions of a separation agreement, divorce decree or property settlement agreement or an order of a court of record or a determination made in accordance with applicable nonbankruptcy law by a governmental unit. Finally, the debt must not be assigned to a nongovernmental entity, unless the obligation is assigned voluntarily by the spouse, former spouse or child of the debtor or such child's parent, legal guardian or responsible relative for the purpose of collecting the debt.

The mere fact that the debtor and the plaintiff have never been married is not dispositive of this adversary proceeding, as the debtor may owe a nondischargeable debt to the parent of his child if the debtor if the debt is in the nature of support for the child or the child's parent. The debtor has not shown that he is entitled to judgment as a matter of law. The out-of-circuit authority he cites is not binding on this court. Accordingly, the motion is denied.

The court will issue a minute order.

4. [12-28102](#)-B-7 RALPH/SUZANNE EMERSON MOTION FOR ENTRY OF DEFAULT
[13-2176](#) PGM-8 JUDGMENT
EMERSON ET AL V. EMOVATIONS 8-22-13 [[26](#)]
INCORPORATED

Tentative Ruling: The motion is denied without prejudice.

The debtors seek entry of a default judgment against defendant Emovations, Inc. ("Emovations") This adversary proceeding was converted from an objection filed by the debtors in the parent bankruptcy case to Emovations' proof of claim (the "Claim"). Since the objection was converted to this adversary proceeding, the debtors have amended the objection by filing an amended complaint (Dkt. 5) which alleges four claims for relief, including 1.) Declaratory relief; 2.) Intentional infliction of emotional distress; 3.) Fraud and; 4.) Violation of California Business and Professions Code § 17200.

Emovations having not answered the complaint and its default having been entered, the debtors request entry of default judgment.

However, to the extent the debtors' claims are state law claims in response to the filing of the Claim, as with the claims for fraud, intentional infliction of emotional distress and violation of Cal. Bus. & Prof Code § 17200, they are preempted by the Bankruptcy Code. MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910 (9th Cir. 1996).

"[A] mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code, 11 U.S.C. §§ 101 et seq., demonstrates Congress's intent to create a whole system under federal control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed debtors alike. While it is true that bankruptcy law makes reference to state law at many points, the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal. It is

very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process."

Id. at 914 (footnote omitted). The debtors cannot obtain the relief they seek on their state law claims against Emovations in this adversary proceeding.

Further, the court construes the remaining claim for declaratory relief as an objection to the Claim itself. The debtors have not shown they have standing to pursue an objection to claim. Since the commencement of this adversary proceeding, the debtors' parent bankruptcy case was converted to one under chapter 7. A party-in-interest can only object to a claim if it demonstrates an "injury in fact" if the claim is not disallowed. Cheng v. K&S Diversified Investments, Inc. (In re Cheng), 308 B.R. 448, 454 (9th Cir. BAP 2004) (J. Klein). Typically, a chapter 7 debtor has no standing because he does not have a pecuniary interest in the distribution of the assets of the estate. Kapp v. Naturelle, Inc. (In re Kapp), 611 F.2d 703, 706-707 (8th Cir. 1979). An exception to this rule exists where there will be a surplus available to return to the debtor. Kapp, 611 F.2d at 707. The debtors have provided no evidence that this is a surplus case.

A second exception to the Kapp rule exists. It is not referenced in Kapp because it was not at issue in that case. The debtors can establish a pecuniary interest where their personal liability will survive the bankruptcy. See In re KRSM Properties, LLC, 318 B.R. 712, 716 (9th Cir. BAP 2004) and McGuirl v. White, 86 F.3d 1232, 1235-36 (D.C. Cir. 1996). The debtors have not shown that this second exception applies. While the deadline to object to the debtors' discharge has been extended until December 16, 2013, following the conversion of the case, no complaint seeking denial of discharge or a determination of non-dischargeability is currently pending. The only other adversary proceeding pending is number 12-2364-B, which is an action removed from Sacramento County Superior Court and which alleges no claims under 11 U.S.C. §§ 523 or 727.

The court will issue a minute order.

5. [13-25108](#)-B-7 DEBRA LOCKHART MOTION TO RECONSIDER DENIAL OF
EXTENSION TO PAY FINAL FEE
8-28-13 [[98](#)]

Tentative Ruling: In the absence of opposition, the motion is granted. The deadline for the debtor to pay the final chapter 7 filing fee installment payment is extended from August 15, 2013, to and including September 5, 2013. Except as so ordered, the motion is denied.

The court will issue a minute order.

6. [13-25108](#)-B-7 DEBRA LOCKHART

MOTION TO RECONSIDER DENIAL OF
REDEMPTION
8-28-13 [[99](#)]

Tentative Ruling: The opposition filed by Car Cage Motors, Inc. is sustained. The motion is denied.

The debtor seeks reconsideration of the court's order entered August 27, 2013 (Dkt. 94) (the "Order") denying her motion the (the "Motion") to redeem personal property of the estate consisting of a 2003 Hyundai Santa Fe (the "Hyundai") from secured creditor Car Cage Motors, Inc. ("Car Cage").

However, the debtor has shown no grounds for reconsideration of the Order. As explained in the ruling on the Motion, the debtor could not redeem the Hyundai on the terms sought in the motion. The debtor requested in the Motion that she be allowed to redeem the Hyundai by paying \$800 of the proposed redemption value within 30 days of the time that the Motion was granted, with the balance to be repaid over 16 months. As the court explained, 11 U.S.C. § 722, which governs redemption of property, does not permit redemption on those terms.

It appears from the instant motion for reconsideration that nothing has changed since entry of the Order. The debtor still requests that she be allowed to redeem the Hyundai by paying Car Cage \$801.00 twenty days after the hearing on this motion, even though the debtor's own evidence of the value of the Hyundai shows that it is worth more than \$801.00. As stated in the ruling on the Motion, this is not permitted by the Bankruptcy Code. The debtor must pay the full redemption value of the Hyundai "in full at the time of redemption." 11 U.S.C. § 722. There is nothing in the Bankruptcy Code which allows any amount of the redemption value above the amount the debtor is willing to pay to be discharged, nor is there any exception to the requirements of § 722 based on the debtor's desire and alleged need to retain the Hyundai. Accordingly, the motion is denied.

The court will issue a minute order.

7. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-06

CONTINUED MOTION TO VALUE
COLLATERAL OF BANK OF AMERICA
AND/OR MOTION TO AVOID LIEN OF
BANK OF AMERICA
4-21-13 [[55](#)]

Tentative Ruling: Tentative Ruling: The debtors' motion to value the collateral identified as real property located at 230 Wicked Wedge Way, Las Vegas, Nevada, is continued to a final evidentiary hearing on December 19, 2013, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before December 12, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders

(or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before __, 2013, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtors' Motion to Value. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court notes that this motion for valuation is apparently for purposes of plan treatment. However, in chapter 11, "for purposes of the reorganization plan, the value of collateral is determined at the time the plan is confirmed." In re Capital West Investors, 178 B.R. 824, 827-28 (Bankr. N.D. Cal. 1995), rev'd on other grounds and remanded, 186 B.R. 497 (N.D. Cal. 1995). No plan or disclosure statement has been approved.

The court will issue a minute order.

8. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
PD-3

CONTINUED MOTION FOR APPROVAL
OF STIPULATION RE: TREATMENT OF
CLAIM UNDER DEBTORS' PROPOSED
CHAPTER 11 PLAN OF
REORGANIZATION
8-5-13 [[421](#)]

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

The motion is granted. The Amended Stipulation Re: Treatment of Claim Under Debtors' Proposed Chapter 11 Plan of Reorganization, filed on September 10, 2013 (Dkt. 506), is approved and binding between the parties thereto. Except as so ordered, the motion is denied.

The court will issue a minute order.

9. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-08 COLLATERAL OF BANK OF AMERICA
AND/OR MOTION TO AVOID LIEN OF
BANK OF AMERICA
4-21-13 [[57](#)]

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

The motion is removed from the calendar, as resolved by the amended stipulation of the debtors and the secured creditor filed on September 10, 2013, and approved by the court elsewhere on this calendar.

The court will issue a minute order.

10. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-09 COLLATERAL OF BANK OF AMERICA
AND/OR MOTION TO AVOID LIEN OF
BANK OF AMERICA
4-21-13 [[59](#)]

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

The motion is removed from the calendar, as resolved by the stipulation of the debtors and the creditor filed on September 18, 2013 (Dkt. 515), and approved by order signed September 26, 2013.

11. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-11 COLLATERAL OF WELLS FARGO
AND/OR MOTION TO AVOID LIEN OF
WELLS FARGO
4-21-13 [[58](#)]

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

The motion is continued to October 15, 2013, at 9:32 a.m., to be heard after the hearing on the Motion for Approval of Stipulation Re: Treatment of Claim under Debtors' Proposed Chapter 11 Plan of Reorganization (Dkt. 488).

12. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION FOR APPROVAL
PD-1 OF STIPULATION RE: TREATMENT OF
DEBTORS' PROPOSED CHAPTER 11
PLAN OF REORGANIZATION
8-2-13 [[380](#)]

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

The motion is granted. The Amended Stipulation Re: Treatment of Claim under Debtors' Proposed Chapter 11 Plan of Reorganization (Dkt. 502) is approved and binding between the parties thereto. Except as so ordered, the motion is denied.

The court will issue a minute order.

13. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-13 COLLATERAL OF WELLS FARGO
AND/OR MOTION TO AVOID LIEN OF
WELLS FARGO
4-21-13 [[62](#)]

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

The motion is removed from the calendar, as resolved by the amended stipulation of the debtors and the secured creditor filed on September 10, 2013, and approved by the court elsewhere on this calendar.

The court will issue a minute order.

14. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO USE CASH
KG-360 COLLATERAL
8-5-13 [[406](#)]

Tentative Ruling: The motion is granted. The debtors are authorized to use cash collateral consisting of the rents from real property located at 1301 Arkansas Street, Vallejo, California in a manner consistent with the budget filed with the motion as amended Exhibit "A" (Dkt. 510), provided that payments made to lienholder Wells Fargo Bank, N.A. are applied by the bank only to reduce the amount of its allowed secured claim. Except as so ordered, the motion is denied.

The court will issue a minute order.

15. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-16 COLLATERAL OF GMAC AND/OR
MOTION TO AVOID LIEN OF GMAC
4-21-13 [[53](#)]

Tentative Ruling: None.

16. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION FOR APPROVAL OF
PD-4 STIPULATION RE: TREATMENT OF
CLAIM UNDER DEBTORS' PROPOSED
CHAPTER 11 PLAN OF
REORGANIZATION
8-21-13 [[450](#)]

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

The motion is granted. The Amended Stipulation Re: Treatment of Claim Under Debtors' Proposed Chapter 11 Plan of Reorganization (Dkt. 508) is approved and binding between the parties thereto. Except as so ordered, the motion is denied.

The court will issue a minute order.

17. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-14 COLLATERAL OF WELLS FARGO
AND/OR MOTION TO AVOID LIEN OF
WELLS FARGO
4-21-13 [[80](#)]

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

The motion is removed from the calendar, as resolved by the amended stipulation of the debtors and the secured creditor filed on September 10, 2013, and approved by the court elsewhere on this calendar.

The court will issue a minute order.

18. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO USE CASH
KG-356 COLLATERAL
8-5-13 [[412](#)]

Tentative Ruling: This matter continued from September 3, 2013, to allow the debtors to supplement the motion with evidence that secured creditor and second deed of trust holder Ocwen Loan Servicing, LLC was properly

served with the motion. No amended certificate of service having been filed since the continuance, the court reissues its prior tentative ruling.

The motion is denied without prejudice.

The motion suffers from a procedural defect. It does not appear to the court that Ocwen Loan Servicing, LLC ("Ocwen") the holder of the second deed of trust (allegedly with an assignment of rents provision) encumbering the real property located at 3728 Rocky Shore Drive, Vallejo, California, that is the subject of this motion, was properly served with the moving papers.

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 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." In this case, the debtors served Ocwen "Attn: Bankruptcy Department." There is no evidence that "Bankruptcy Department" is an officer, a managing or general agent or any other agent authorized by law to receive service of process. Accordingly, the motion is denied without prejudice.

In addition, if and when the debtors re-file this motion, the motion should set forth additional information to aid the court and parties in interest in evaluating the motion. Specifically, the motion should set forth the value of the real property generating the rents as well, the total amount of encumbrances on the property and whether the foregoing information is subject to being affected by an ongoing proceedings such as motions to value collateral or pending stipulations regarding collateral valuation or plan treatment. The foregoing will assist the court's evaluation of the matter.

The court will issue a minute order.

19. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
PD-2

CONTINUED MOTION FOR APPROVAL
OF STIPULATION RE: TREATMENT OF
CLAIM UNDER DEBTORS' PROPOSED
CHAPTER 11 PLAN OF
REORGANIZATION
8-2-13 [[385](#)]

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

The motion is granted. The Amended Stipulation Re: Treatment of Claim under Debtors' Proposed Chapter 11 Plan of Reorganization filed on September 10, 2013 (Dkt. 504), is approved and binding between the parties thereto. Except as so ordered, the motion is denied.

The court will issue a minute order.

20. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-361

CONTINUED MOTION FOR
COMPENSATION FOR KAYLA M.
GRANT, DEBTOR'S ATTORNEY(S),
FEE: \$21,270.00, EXPENSES:
\$348.48
8-7-13 [[427](#)]

Tentative Ruling: This matter continued from September 3, 2013, to allow the applicant to file an amended Exhibit E in support of the motion. The applicant filed the amended exhibit on September 10, 2013 (Dkt. 500). This motion is unopposed. The court now issues the following tentative ruling.

The application is granted in part to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on an interim basis in the amount of \$17,997.00 in fees and \$386.29 in costs, for a total of \$18,383.29 in fees and costs, for services rendered by the applicant during the period April 3, 2013, to July 25, 2013. The applicant is authorized to apply the \$10,000.00 balance of her retainer held in trust to the foregoing approved fees and costs, and the remainder shall be payable as a chapter 11 administrative expense. Except as so ordered, the application is denied.

The approved fees and costs represent a \$3235.19 reduction in the total amount of fees and costs requested in the application. The reduction and the total amount of fees and costs approved is based on the following methodology.

First, the court considers only those fees and costs that are represented on the billing invoices submitted as Exhibits A-F to the motion. Section § 330 directs the court to authorize compensation only for, inter alia, "actual" services. The invoices are the only evidence in support of the motion of the actual services performed and costs incurred by the applicant.

Second, the court disallows from the totals set forth in the invoices all fees charged and costs incurred by the applicant prior to April 3, 2013. The applicant's employment was approved by order entered August 13, 2013 (Dkt. 442) (the "Employment Order"). By amended order entered September 27, 2013, the court approved an effective date of employment for the applicant of April 3, 2013, which is 30 days prior to the filing date of the employment application, consistent with this department's policy of allowing an order approving a professional's employment to state an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). 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); therefore, all fees and expenses incurred prior to April 3, 2013, are disallowed.

Finally, the court acknowledges that the applicant has voluntarily

reduced the fees sought for several services rendered in this case. In light of the voluntary reduction, the court sees no need to further reduce the fees and expenses requested on the basis of necessity or reasonableness.

The court will issue a minute order.

21. [13-27205](#)-B-7 THOMAS MURPHY OBJECTION TO DEBTOR'S CLAIM OF
TAA-1 EXEMPTIONS
8-21-13 [[30](#)]

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. The chapter 7 trustee withdrew the objection on September 20, 2013 (Dkt. 36).

22. [11-49408](#)-B-7 PATRICK/RETHA KENOYER MOTION FOR TURNOVER OF PROPERTY
SLF-7 9-3-13 [[77](#)]

Tentative Ruling: The motion is denied without prejudice.

The chapter 7 trustee seeks turnover from the debtors pursuant to 11 U.S.C. § 542 of 1.) Real property located at located at Lot Number 17, Block 11, Zone 5, Loreto, Baja California Sur, Mexico (the "Real Property"); 2.) An accounting of all revenues generated by the Real Property since the date of the filing of the petition (the "Accounting"); 3.) A bank account in Mexico with Bancomer (the "Bank Account"); 4.) Bank statements and cancelled checks from the bank account for the five-year period prior to the date of the filing of the petition (the "Account Information").

In order to prevail on a turnover motion, the trustee must demonstrate that: (1) the Property is or was in the debtors' possession, custody or control during the pendency of the bankruptcy case; (2) the Property could be used by the trustee or exempted by the debtors; and (3) the Property has more than inconsequential value and benefit to the estate. Bailey v. Suhar (In re Bailey), 380 B.R. 486, 490 (6th Cir. BAP 2008). If the foregoing elements are demonstrated, but the debtors are not in possession of the Property at the time of the motion, the trustee is entitled to an order requiring the debtors to pay to the trustee the value of the Property. Newman v. Schwartz (In re Newman), 487 B.R. 193, 200 (9th Cir BAP 2013). See, also In re Bailey, 380 B.R. at 492-493; Boyer v. Davis (In re U.S.A. Diversified Prods., Inc.), 193 B.R. 868, 879 (Bankr. N.D. Ind. 1995); In re Gentry, 275 B.R. 747 (Bankr. W.D. Va. 2001). Such an order to pay the value of the Property is enforceable as a money judgment. White v. Brown (In re White), 389 B.R. 693, 699 (9th Cir. BAP 2008).

The court does not grant the trustee's request for turnover of the Real Property because he has not shown that the debtors are in possession of the Real Property. According to the trustee, the Real Property is owned

not by the debtors, but by a trust, of which the debtors are beneficiaries. The property of the estate is the debtors' interest in the trust, not the Real Property.

The court does not grant the trustee's request for turnover of the Bank Account because the trustee has not explained how the debtors can turn over a bank account which consists of a debt owed by Bancomer to the debtor, nor has the trustee shown any evidence regarding the value of the Bank Account.

The court does not grant the trustee's request for turnover of the Account Information because the trustee has not shown that the debtors have the Account Information in their possession, nor any evidence of its value.

The court does not grant the trustee's request for turnover of the Accounting because the trustee has not shown that the debtors have the Account Information in their possession, nor any evidence of its value. Rather, it appears that what the trustee seeks is an order requiring the debtors to complete and provide an accounting to the trustee. That kind of injunctive relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(7).

The court will issue a minute order.

23. [12-31415](#)-B-7 VLADIMIR/VERA SHAYNYUK MOTION FOR COMPENSATION FOR
SMD-4 BKASSETS.COM, LLC,
AUCTIONEER(S), FEES: \$289.37,
EXPENSES: \$239.10
8-30-13 [[39](#)]

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

The application is granted to the extent set forth herein. The application is approved on a final basis in the amount of \$289.37 in fees and \$239.10 in costs, for a total of \$528.47 in fees and costs, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On June 17, 2012, the debtors filed a chapter 7 petition. By order entered on March 14, 2013 (Dkt. 34) (the "Order"), the court authorized the trustee to retain applicant as auctioneer for chapter 7 trustee in this case. The order provided that applicant's fees would not exceed 10% of the gross sale price of the personal property to be auctioned and that applicant's reimbursable costs would not exceed \$250.00. Applicant now seeks compensation for commissions earned and expenses incurred through April 16, 2013. As set forth in the application, the approved commissions and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

24. [12-26920](#)-B-7 JOSE AMBRIZ CARRANZA AND MOTION TO AVOID LIEN OF LVNV
AKH-1 YARI AMBRIZ FUNDING, LLC
8-22-13 [[41](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of LVNV Funding, LLC, recorded in the official records of San Joaquin County, Document No. 2009-064749, is avoided as against the real property located at 9135 Hereford Court, Stockton, California.

The subject real property has a value of \$130,400.00 as of the date of the petition. The unavoidable liens total approximately \$163,000.00. 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.

25. [11-35325](#)-B-7 JAMES COXETER CONTINUED MOTION TO SELL
MPD-14 8-27-13 [[929](#)]

Tentative Ruling: This matter continued from September 17, 2013. This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 2001 Mercedes Benz ML55 automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$10,225.00. The trustee is authorized to distribute the sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

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

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

26. [11-35325](#)-B-7 JAMES COXETER
MPD-15

CONTINUED MOTION TO SELL
8-27-13 [[934](#)]

Tentative Ruling: This matter continued from September 17, 2013. This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 2002 Mercedes Benz SL500 automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$11,500.00. The debtor may apply his claimed exemption in the vehicle of \$2900.00 as set forth in the amended Schedule C filed on September 27, 2013, against the purchase price of the vehicle. The trustee is authorized to distribute the cash sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

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

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

27. [13-30326](#)-B-7 DEBORAH CALLEGARI MOTION TO COMPEL ABANDONMENT
9-9-13 [[11](#)]

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 suffers from several procedural defects. First, neither the initial notice of hearing (Dkt. 14) nor the amended notice of hearing (Dkt. 15) specify a deadline for filing written opposition, as required by Local Bankruptcy Rule 9014-1(d)(3). The debtor did not assign the motion a docket control number, as required by LBR 9014-1(c). The debtor did not file the motion and proof of service or the notice of hearing and proof of service as separate documents, as required by LBR 9004-1(a), which incorporates the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. The Revised Guidelines for the Preparation of Documents provide in paragraph 3(a) that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service and related pleadings shall be filed as separate documents.

In addition, the statement on the certificates of mailing appended to the motion and to the notices of hearing that the documents were mailed "to the official mailing list" is insufficient to prove that the moving papers were properly served. The debtor must file a list of the parties and addresses served with the moving papers.

Failure to comply with the court's local rules is grounds, inter alia, imposition of sanctions, including denial of the motion. LBR 1001-1(g). The debtor's counsel is advised to familiarize herself with the court's local rules of practice before making further filings in this case.

The court will issue a minute order.

28. [13-23535](#)-B-7 JOHN LEE REQUEST FOR ENTRY OF DEFAULT
[13-2205](#) 8-20-13 [[13](#)]
AMERICAN EXPRESS BANK, FSB V.
LEE

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

The motion is continued to October 15, 2013, at 9:32 a.m. The briefing for this matter is closed.

29. [13-23040](#)-B-11 HERBERT MILLER
GEM-2

CONTINUED MOTION TO VALUE
COLLATERAL OF WASHINGTON MUTUAL
BANK, FA (11356 ALTA MESA EAST
ROAD, WILTON, CA)
3-15-13 [[16](#)]

Tentative Ruling: This motion was continued to this calendar from an evidentiary hearing date set for August 22, 2013 at 2:00 p.m. The evidentiary hearing was vacated and the matter continued to this calendar due to the withdrawal of the opposition to the motion filed by secured creditor Citimortgage, Inc. The court now issues the following tentative ruling.

The motion is denied without prejudice.

By this motion, the debtor seeks to value real property located at 11356 Alta Mesa East Rd., Wilton, California (the "Real Property") at \$97,920.00. However, the debtor has not submitted admissible evidence sufficient to support his proposed valuation of the Real Property. According to the motion, the debtor's proposed value is based on his opinion that an appraisal performed by appraiser Barth Boss, which appraisal determined the value of the real property to be \$272,000.00, is inaccurate because the appraisal does not take into account "actual knowledge of the repairs needed" on the Real Property and "title defects" on the Real Property.

As owner of the Real Property, the debtor may submit a lay opinion of its value. Fed. R. Evid. 701. However, the court is not required to accept the debtor's opinion of value. According to his sworn Schedule I, the debtor is a Store Manager at Sharif Jewelers in Sacramento, California. The debtor has not submitted any evidence that he is a licensed contractor or that he is a licensed attorney. The debtor has not established that he is qualified to assess the proper deductions, if any, from the value of the Real Property based on the costs of repairs or alleged title defects. Furthermore, although the debtor contends that the appraisal does not take into account costs of repairs, the appraisal itself (Dkt. 22) notes that the Real Property was in less than average condition at the time of the appraisal, that the Real Property's wood siding was in need of replacement, that the interior paint was worn and that the Real Property has "extensive deferred maintenance" which could encompass many if not all of the repairs the debtor contends are needed but not taken into account by the appraisal.

The court will issue a minute order.

30. [12-35709](#)-B-7 ARTURO SANCHEZ CONTINUED MOTION FOR ENTRY OF
[12-2666](#) RLR-1 DEFAULT JUDGMENT
TRAVELERS EXPRESS COMPANY, 4-22-13 [[42](#)]
INC. V. SANCHEZ

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

The matter is submitted on the papers.

31. [12-38199](#)-B-7 STEVE GREGORY MOTION FOR ENTRY OF DEFAULT
[13-2022](#) CLG-2 JUDGMENT
GREGORY V. GREGORY 8-30-13 [[38](#)]

Tentative Ruling: The motion is denied without prejudice.

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

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

The court will issue a minute order.

32. [12-37673](#)-B-7 KARL VON RODENSTEIN MOTION FOR INTERNATIONAL
COMMERCIAL COUNTERCLAIM
9-4-13 [[194](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion is denied without prejudice because it suffers from the following procedural defects. First, the motion does not succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. This is required of a party that serves notice of a motion without the motion of supporting papers attached. LBR 9014-1(d)(4). Second, the motion fails to cite any legal authority relied upon by the filing party. LBR 9014-1(d)(6). A failure to comply with

the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

33. [13-31040](#)-B-11 JIM ALEXANDER MOTION TO VALUE COLLATERAL OF
DSS-1 WELLS FARGO HOME MORTGAGE
8-29-13 [[8](#)]

Tentative Ruling: The debtor's motion to value the real property located at 565 Kearsarge Court, Alta, CA 95701 is continued to a final evidentiary hearing on November 14, 2013 at 2:00 p.m. before the Honorable David E. Russell in courtroom 32.

On or before November 7, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before November 7, 2013, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Real Property Located at 565 Kearsarge Court, Alta, CA 95701. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

34. [13-31040](#)-B-11 JIM ALEXANDER MOTION TO VALUE COLLATERAL OF
DSS-2 GREEN TREE SERVICING
8-29-13 [[13](#)]

Tentative Ruling: This matter is continued to November 26, 2013 at 9:32 a.m.

35. [13-31040](#)-B-11 JIM ALEXANDER
DSS-3

MOTION TO VALUE COLLATERAL OF
JON AND PEGGY SANDERS
8-29-13 [[17](#)]

Tentative Ruling: The debtor's motion to value the real property located at 20235-20245 West Paoli Lane, Weimar, CA 95713 is continued to a final evidentiary hearing on November 14, 2013 at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before November 7, 2013, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before November 7, 2013, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Real Property Located at 20235-20245 West Paoli Lane, Weimar, CA 95713. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

36. [13-31040](#)-B-11 JIM ALEXANDER
DSS-4

MOTION TO VALUE COLLATERAL OF
JON AND PEGGY SANDERS
8-29-13 [[21](#)]

Tentative Ruling: This matter is continued to November 26, 2013 at 9:32 a.m.

37. [13-31040](#)-B-11 JIM ALEXANDER
DSS-5

MOTION TO VALUE COLLATERAL OF
SIERRA CENTRAL
8-29-13 [[25](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for

the purposes of this motion, the debtor's 2005 Toyota 4Runner (the "Collateral") had a value of \$3,000.00 on the date of the filing his chapter 11 petition. Except as so ordered, the motion is denied.

The foregoing valuation does not establish a value of the Collateral for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* paragraph 506.03[d][10] (15th ed. Rev. 2009). In this case, no plan has been confirmed and a disclosure statement is yet to be approved.

The court will issue a minute order.

38. [07-21245](#)-B-7 LAWRENCE FEDERICO MOTION FOR COMPENSATION FOR
KJL-3 MARIA T. STOKMAN,
ACCOUNTANT(S), FEES: \$1,610.00,
EXPENSES: \$0.00
8-29-13 [[452](#)]

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

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$1,610.00 in fees and \$0.00 in expenses, for a total of \$1,610.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period October 7, 2010, through October 22, 2012. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

39. [07-21245](#)-B-7 LAWRENCE FEDERICO MOTION FOR COMPENSATION FOR
KJL-4 KENNETH JOHN JORGENSEN,
TRUSTEE'S ATTORNEY(S), FEES:
\$29,350.50, EXPENSES: \$979.61
8-29-13 [[459](#)]

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

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$29,325.00 in fees and \$979.61 in expenses, for a total of \$30,304.61, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period May 10, 2010, through October 1, 2013. The fees and expenses requested are approved, with the exception of 0.1 hours of work performed on May 3, 2010 totaling \$25.50. By order entered on June 17, 2010 (Dkt. 426), the court authorized the trustee to retain the applicant as counsel in this case. The applicant's employment was effective May 10, 2010. 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). Therefore, the applicant's fees are reduced by \$25.50 for a total fee award of \$29,325.00. The requested expenses are approved in full. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

40. [10-34749](#)-B-7 LESLIE MCGAHA MOTION TO COMPROMISE
HSM-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LESLIE VALERIE
MCGAHA
9-3-13 [\[27\]](#)

Tentative Ruling: The motion is granted. The debtor and trustee are authorized to enter into and perform in accordance with the Agreement For Compromise Of Disputes (the "Agreement") filed as an exhibit to the motion (Dkt. 30). Pursuant to 11 U.S.C. § 363(b)(1), the trustee is authorized to sell the estate's interest in a 2002 BMW 330i in accordance with the terms set forth in his motion, except that the overbidding terms shall be approved by the court at the hearing on the motion. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

As to the sale, the trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

As to the trustee's request for approval of the Agreement, 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 Agreement is fair and equitable. 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 proposed Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

41. [12-31555](#)-B-7 LONNIE KERLEY MOTION TO RECONSIDER DISMISSAL
DDB-15 OF CASE
8-20-13 [[179](#)]

CASE DISMISSED 8/13/13

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion is denied without prejudice because it was not properly served. The motion seeks relief affecting all creditors, and they must be given proper notice of the request. Here, the debtor did not file a proof of service with the motion. There is therefore no evidence that the motion was served on any party in interest and no evidence that any party received notice of the motion in derogation of LBR 9014-1(e). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

Even if this motion did not suffer from this procedural defect, it would still be denied. The debtor argues that grounds exist to set aside the order dismissing the case because neither he nor his attorney received notice of the section 341(a) meeting of creditors or the trustee's motion to dismiss. This argument has no merit. According to the docket, the case was converted to a chapter 7 case on May 21, 2013 (Dkt. 153). Notice of the conversion, which contains the date and time of the section 341(a) meeting of creditors, was filed and transmitted to the Bankruptcy Noticing Center ("BNC") for service on May 21, 2013 (Dkt. 156). That same day, the certificate of mailing of the notice of conversion was filed by the BNC (Dkt. 159). The third name listed on the notice of conversion is "Donald Beury, 1024 Iron Point Road, Folsom, CA 95630-8013."

Upon proof that mail is properly addressed, stamped and deposited in the United States Mail, it is presumed to have been received by the addressee in the ordinary course of the mails. Hagner v. United States, 285 U.S. 427, 430, 52 S.Ct. 417, 419, 76 L.Ed. 861, 864 (1932); Hon. Barry Russell, Bankruptcy Evidence Manual § 301.8 (West 2007 - 2008 Ed.). This presumption, called the "mailbox rule," exists to avoid "swearing contests" between parties regarding service. Schikore v. BankAmerica Supp. Ret. Plan, 269 F.3d 956, 965 (9th Cir. 2001). Once the presumption arises, it "can only be overcome by clear and convincing evidence that the mailing was not, in fact, accomplished." Moody v. Bucknum (In re Bucknum), 951 F.2d 204, 206-07 (9th Cir. 1991). "If a party were permitted to defeat the presumption of receipt of notice resulting from the certificate of mailing by a simple affidavit to the contrary, the scheme of deadlines and bar dates under the Bankruptcy Code would come unraveled. For this reason, an allegation that no notice was received does not, by itself, rebut the presumption of proper notice." In re Ricketts, 80 B.R. 495, 497 (9th Cir. B.A.P. 1987). Here, the debtor's

only argument is that he and his counsel failed to receive notice of the section 341(a) meeting of creditors and the trustee's motion to dismiss. This alone is insufficient to rebut the presumption of the "mailbox rule."

The court will issue a minute order.

42. [13-27856](#)-B-7 ARTHUR LUND MOTION TO EMPLOY PMZ REAL
SLF-3 ESTATE AS REALTOR(S)
9-3-13 [[26](#)]

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 Bankruptcy Rule 2014, the chapter 7 trustee is authorized to employ Bob Brazeal ("Mr. Brazeal") as realtor for the trustee. Mr. Brazeal's fees and costs shall be paid only pursuant to application. 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that Mr. Brazeal is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

Counsel for the trustee shall submit an order approving employment and compensation of Mr. Brazeal that is consistent with this ruling.

43. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION FOR COMPENSATION BY THE
FWP-97 LAW OFFICE OF FITZGERALD
WILLOUGHBY AND PASCUZZI LLP FOR
THOMAS A. WILLOUGHBY, DEBTOR'S
ATTORNEY(S), FEES: \$318,111.50,
EXPENSES: \$6,234.37
8-28-13 [[2149](#)]

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

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$318,111.50 in fees and \$6,234.37 in expenses, for a total of \$324,345.87 for the period of March 1, 2013 through June 30, 2013. The total award shall be paid as a chapter 11 administrative expense. The debtor is authorized to pay any unpaid interim fees and costs from funds segregated for this purpose pursuant to the Order Establishing Interim Fee Application and Expense Reimbursement Procedure for Professionals Employed by the Estate under Section 327 entered on November 13, 2012 (Dkt. 288). Except as so ordered, the motion is denied.

On October 8, 2012, the debtor filed a chapter 11 petition. By order entered on November 9, 2012 (Dkt. 263), the court authorized employment

of Felderstein Fitzgerald Willoughby & Pascuzzi LLP as counsel for the debtor. The applicant now seeks compensation for services for the period of March 1, 2013 through June 30, 2013. For purposes of this interim application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

44. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-98 MOTION FOR COMPENSATION FOR FTI CONSULTING, INC., CONSULTANT(S), FEES: \$78,776.00, EXPENSES: \$1,214.21 8-28-13 [[2154](#)]

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

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$78,776.00 in fees and \$1,214.21 in expenses, for a total of \$79,990.21 for the period of March 1, 2013 through and including June 30, 2013. The total award shall be paid as a chapter 11 administrative expense. The debtor is authorized to pay any unpaid interim fees and costs from funds segregated for this purpose pursuant to the Order Establishing Interim Fee Application and Expense Reimbursement Procedure for Professionals Employed by the Estate under Section 327 entered on November 13, 2012 (Dkt. 288). Except as so ordered, the motion is denied.

On October 8, 2012, the debtor filed a chapter 11 petition. By order entered on November 13, 2012 (Dkt. 289), the court authorized employment of FTI Consulting, Inc., as Chief Restructuring Officer for the debtor. The applicant now seeks compensation for services for the period of March 1, 2013 through and including June 30, 2013. For purposes of this interim application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

45. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FXR-34 MOTION FOR COMPENSATION BY THE LAW OFFICE OF LOWENSTEIN SANDLER LLP FOR JEFFREY D. PROL, CREDITOR COMM. ATY(S), FEES: \$252,123.50, EXPENSES: \$3,681.28 9-3-13 [[2171](#)]

Tentative Ruling: This matter will not be heard before 11:00 a.m.

The motion is denied without prejudice.

The motion is incomplete. The declaration of Jeffrey D. Prol (Dkt. 2173) states that the billing statement of Lowenstein Sandler LLP ("Lowenstein") is attached to the motion as an exhibit (Dkt. 2174). However, the court finds that no such billing statement has been attached. While the court acknowledges the general breakdown of services rendered by Lowenstein in its second application for interim fees and expenses, this information is insufficient for the court to make a finding that the compensation requested is for actual, necessary and beneficial services.

The court will issue a minute order.

46. [13-29666](#)-B-7 MICHAEL MEYER MOTION TO AVOID LIEN OF BRENT
DMB-1 P. COLLINSON
8-29-13 [[11](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Brent P. Collinson, recorded in the official records of the Lassen County Recorder's Office, Document No. 2011-06292, is avoided as against the real property located at 708-100 Wingfield Road, Janesville, CA 96114 ("Property").

The debtor alleges without dispute that the Property has a value of \$212,900.00 as of the date of the petition. The unavoidable liens total \$271,118.57. The debtor claimed an exemption in the Property in the amount of \$1.00 under Cal. Code Civ. P. § 703.140(b)(5). 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 in the Property, and its fixing is avoided.

The court will issue a minute order.

47. [13-27769](#)-B-7 JEFFERY/ANA CALDERON MOTION TO REDEEM
8-5-13 [[22](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

By this motion, the debtors seek to redeem a 2009 Nissan Cube (the "Vehicle") from a purchase money security interest held by secured creditor Alphaera Loan Company. Pursuant to 11 U.S.C. § 722, a debtor is permitted to redeem tangible personal property intended primarily for personal family or household use "if such property has been exempted under section 522 of this title or has been abandoned under section 554 of this title." Here, the debtors state that the Vehicle is exempted, but there is no evidence of this exemption listed on Schedule C (Dkt. 11,

p.7) of their voluntary petition. Therefore, the debtors have not claimed the Vehicle as exempt under 11 U.S.C. § 522. Furthermore, the Vehicle has not been abandoned under 11 U.S.C. § 554. Accordingly, the debtors have not shown that the Vehicle can be redeemed under section 722.

For counsel's future reference, even if the proposed redemption satisfied the requirements of 11 U.S.C. § 722, the motion would be denied without prejudice due to procedural defects. Specifically, the notice of hearing failed to conform to the requirements of LBR 9014-1(d) and (f). Motions set pursuant to LBR 9014-1(f)(1) must state that opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court at least fourteen (14) calendar days preceding the date of the hearing. LBR 9014-1(f)(1)(B). Furthermore, since written opposition is required for motions set pursuant to LBR 9014-1(f)(1), the notice of hearing must state that failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3) and LBR 9014-1(f)(1)(B). In contrast, motions set pursuant to LBR 9014-1(f)(2) must state that no party in interest shall be required to file written opposition, and that opposition, if any, shall be presented at the hearing on the motion. LBR 9014-1(f)(2)(C). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

48. [13-26478](#)-B-7 ALFONSO RODRIGUEZ OBJECTION TO DEBTOR'S CLAIM OF
ADJ-1 EXEMPTIONS
8-2-13 [[13](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The trustee's objection is overruled.

The trustee's objection is overruled because he has failed to show that the debtor's amendments to his schedules were done in "bad faith." The Ninth Circuit allows for liberal amendments to the debtor's exemption schedule at any time during the pendency of a bankruptcy case. Andermahr v. Barrus, 30 B.R. 532, 534 (9th Cir. BAP 1983). This court has previously stated that:

A claimed exemption is presumptively valid. However, amendments to the exemption schedule may be disallowed if the debtor has acted in bad faith or if prejudice would result. Bad faith must be established by "concrete evidence." Prejudice requires a showing of actual economic loss to the creditors due to the debtor's delay in claiming an exemption. Delay alone is not bad faith and prejudice, once ameliorated, is not a basis to deny an exemption. The Ninth Circuit's policy of liberally allowing amendment of an exemption schedule, in the absence of bad faith or prejudice, has the effect of enhancing the debtor's fresh start.

In re Ruiz, 406 B.R. 897, 901 (Bankr. E.D.C.A. 2009) (citing to Arnold v. Gill, 252 B.R. 778, 784 (9th Cir. B.A.P. 2000)).

With regard to the "bad faith" requirement, the Ninth Circuit Bankruptcy Appellate Panel has held that:

The usual ground for a finding of 'bad faith' is the debtor's attempt to hide assets. The rationale for this judge-made 'bad faith' exception to Rule 1009(a)'s liberal policy of amendments is:

[A]lthough amendments before discharge are liberally allowed...[the debtors'] omissions from the initial list suggest that they meant to hide assets if they could get away with it...The operation of the bankruptcy system depends on honest reporting. If debtors could omit assets at will, with the only penalty that they had to file an amended claim once caught, cheating would be altogether too attractive."

Arnold v. Gill, 252 B.R. at 785-86 (citing to Matter of Yonikus, 996 F.2d 866, 872 (7th Cir. 1993)).

Here, the trustee argues that the debtor acted in bad faith by misleading the trustee, creditors, and other parties in interest regarding the value of and his ownership interest in the real property located at 2553 Marie Way, Stockton, CA 95205 (the "Property"). The trustee expended time and energy in preparing to sell the Property in reliance on the values set forth in the debtor's original schedules (Dkt. 1). As such, the debtor should not be allowed to increase the amount of his claimed exemption in the Property past the \$5,355.00 originally claimed (Dkt. 1, p.12). Based on the foregoing, the trustee's argument fails to meet the bad faith requirement that has been established in the Ninth Circuit. Specifically, the trustee has not shown any attempt on the part of the debtor to hide the asset. The debtor disclosed but overstated his interest in the asset in his original Schedule A.

The objection fails to show any prejudice to the trustee or creditors. The trustee's general statement "I have expended time and energy to prepare to sel the Property" is insufficient.

The court will issue a minute order.

49. [13-26478](#)-B-7 ALFONSO RODRIGUEZ MOTION TO EXTEND DEADLINE TO
MDM-1 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
8-13-13 [[23](#)]

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

In the absence of any opposition, the motion is granted and the time with which to file an objection to the entry of the debtor's discharge shall be extended to and through November 14, 2013.

The court grants the motion in the absence of any opposition. However, the court notes that Fed. R. Bankr. P. 4004(b)(1) requires a showing of "cause" to extend the time to object to discharge. The court is unlikely to find cause for any further extension based on the allegations set forth in the trustee's motion. Willms v. Sanderson III, 723 F.3d 1094, 1103, 2013 WL 3823579, *7 (9th Cir. 2013) ("The bankruptcy court also

abused its discretion by granting the time extension without either a showing or a finding of cause.”)

The court will issue a minute order.

50. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-1 OF CITIBANK (SOUTH DAKOTA),
N.A.
7-10-13 [[14](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Citibank (South Dakota) N.A., recorded in the official records of San Joaquin County, Document No. 2005-319240, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

51. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-2 OF AMERICAN EXPRESS CENTURION
BANK
7-10-13 [[19](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of American Express Centurion Bank, recorded in the official records of San Joaquin County, Document No. 2007-036265, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent

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

The court will issue a minute order.

52. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-3 OF WORLDWIDE ASSET PURCHASING,
LLC
7-10-13 [[26](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Worldwide Asset Purchasing, LLC, recorded in the official records of San Joaquin County, Document No. 2007-143567, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

53. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-4 OF NATIONAL CREDIT ACCEPTANCE,
INC.
7-11-13 [[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. § 522(f)(1)(A). The judicial lien in favor of National Credit Acceptance, Inc., recorded in the official records of San Joaquin County, Document No. 2008-150194, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

54. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-5 OF PERSOLVE, LLC
7-11-13 [[36](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Persolve, LLC, recorded in the official records of San Joaquin County, Document No. 2009-176690, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

55. [13-25888](#)-B-7 KATHLEEN CANNON CONTINUED MOTION TO AVOID LIEN
RAC-6 OF TARGET NATIONAL BANK
7-11-13 [[41](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Target National Bank, recorded in the official records of San Joaquin County, Document No. 2010-011408, is avoided as against the real property located at 4714 E. 3rd St., Stockton, CA.

The subject real property has a value of \$213,252.00 as of the date of

the petition. The unavoidable liens total \$72,827.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.730, under which she exempted \$175,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

56. [13-30690](#)-B-11 WILLIAM PRIOR MOTION TO EMPLOY GEORGE C.
HLC-1 HOLLISTER AS ATTORNEY(S)
9-10-13 [[22](#)]

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.

57. [13-30690](#)-B-11 WILLIAM PRIOR MOTION TO EMPLOY DANIEL L. EGAN
WFH-1 AS SPECIAL COUNSEL
9-10-13 [[16](#)]

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.

58. [13-29696](#)-B-7 VERONICA RAMIREZ MOTION TO COMPEL ABANDONMENT
TOG-6 9-4-13 [[25](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion is denied without prejudice because it was improperly filed in accordance with the Local Bankruptcy Rules. Specifically, motions set pursuant to LBR 9014-1(f)(1) must state that opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court at least fourteen (14) calendar days preceding the date of the hearing. LBR 9014-1(f)(1)(B). Furthermore, since written opposition is required for motions set pursuant to LBR 9014-1(f)(1), the notice of hearing must state that failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3) and LBR 9014-1(f)(1)(B). In contrast, motions set pursuant to LBR 9014-1(f)(2) must state that no party in interest shall be required to file written opposition, and that opposition, if any, shall be presented at the hearing on the motion. LBR 9014-1(f)(2)(C).

Here, the debtor's notice has the format of a motion set pursuant to LBR 9014-1(f)(1). However, in order to meet the twenty-eight (28) days' notice requirement of LBR 9014-1(f)(1), the motion needed to have been filed and served no later than September 3, 2013. The debtor's motion was filed and served September 4, 2013, which is only twenty-seven (27) days prior to the hearing. A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

59. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FXR-35 MOTION FOR COMPENSATION BY THE LAW OFFICE OF FOX ROTHSCHILD LLP FOR MICHAEL A. SWEET, CREDITOR COMM. ATY(S), FEES: \$109,777.50, EXPENSES: \$5,709.56 9-3-13 [[2176](#)]

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

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$109,777.50 in fees and \$5,709.56 in expenses, for a total of \$115,487.06 for the period of February 1, 2013 through and July 31, 2013. The total award shall be paid as a chapter 11 administrative expense. The debtor is authorized to pay any unpaid interim fees and costs from funds segregated for this purpose pursuant to the Order Establishing Interim Fee Application and Expense Reimbursement Procedure for Professionals Employed by the Estate under Section 327 entered on November 13, 2012 (Dkt. 288). Except as so ordered, the motion is denied.

On October 8, 2012, the debtor filed a chapter 11 petition. By order entered on November 9, 2012 (Dkt. 268), the court authorized employment of Fox Rothschild LLP, Local Counsel to the Official Committee of Unsecured Creditors. The applicant now seeks compensation for services for the period of February 1, 2013 through July 31, 2013. For purposes of this interim application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

60. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FXR-36 MOTION FOR COMPENSATION FOR COHNREZNICK LLP, OTHER PROFESSIONAL(S), FEES: \$77,612.85, EXPENSES: \$449.70 9-3-13 [[2180](#)]

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

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$77,612.85 in fees and \$449.70 in expenses, for a total of \$78,062.55 for the period of March 1,

2013 through and July 31, 2013. The total award shall be paid as a chapter 11 administrative expense. The debtor is authorized to pay any unpaid interim fees and costs from funds segregated for this purpose pursuant to the Order Establishing Interim Fee Application and Expense Reimbursement Procedure for Professionals Employed by the Estate under Section 327 entered on November 13, 2012 (Dkt. 288). Except as so ordered, the motion is denied.

On October 8, 2012, the debtor filed a chapter 11 petition. By order entered on November 9, 2012 (Dkt. 264), the court authorized employment of CohnReznick as financial advisor for the Committee effective October 22, 2012. The applicant now seeks compensation for services for the period of March 1, 2013 through July 31, 2013. For purposes of this interim application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.