UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 7, 2014 at 9:32 A.M.

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1. 13-25279-B-7 JOSEPH/ROSE ANDER
13-2225
ACK FAMILY LIMITED PARTNERSHIP
V. ANDER ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-23-14 [31]

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 procedural defects. First, the court construes the complaint in this adversary proceeding as objecting to the debtors' discharge, based on the statement in the prayer of the complaint requesting that the court "decline to discharge the debtors in this chapter 7 bankruptcy, or at a minimum, determine the claim of the . . . creditor is not dischargeable." (Dkt. 1 at 7). Pursuant to Fed. R. Bankr. P. 7041, "a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct." In Department B, the court requires notice the United States trustee, the case trustee and all creditors of a motion by the plaintiff to dismiss an adversary proceeding objecting to the debtors' discharge. In this case, the certificate of service attached to the notice of hearing (Dkt. 32) does not show notice of the motion to all of the debtors' creditors.

Second, the motion was filed and set for hearing improperly utilizing the procedures of LBR 9014-1(f)(2). The procedures under LBR 9014-1(f)(2) may not be used for motions filed in an adversary proceeding. LBR 9014-1(f)(2)(A).

Third, the movant did not assign docket control number to the motion, as required by LBR 9014-1(c). Failure to comply with the court's local rules is grounds for, inter alia, dismissal of the motion. LBR 1001-1(g).

The court will issue a minute order.

2. 14-21607-B-7 RENA WASHINGTON
PA-3

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-28-14 [46]

Tentative Ruling: The motion is continued to November 4, 2014, at 9:32 a.m. On or before November 21, 2014, the chapter 7 trustee shall file and serve supplemental briefing regarding his argument that the debtor's claims of exemption in various property must be disallowed on equitable grounds in light of the legal authority cited in this ruling. The debtor shall file and serve a supplemental response, if any, on or before October 28, 2014.

The trustee argues that the debtor's claims of exemption in various personal property should be disallowed based on allegedly bad faith conduct by the debtor. The trustee recognizes that the Supreme Court recently held in Law v. Siegel, 134 S.Ct. 1188 (2014) that there is no general equitable power given to bankruptcy courts by the Bankruptcy Code to deny exemptions based on a debtor's bad faith conduct. The trustee relies on the comment in Siegel that "It is of course true that when a debtor claims a *1197 state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption." Siegel, 134 S.Ct at 1196-97. To that end, the trustee cites to "maxims of jurisprudence" codified in California Civil Code § 3509, et seq., to support the disallowance of the debtor's claims of exemption under Cal. Civ. Proc. Code § 703.010, et seq.

While the trustee cites various of the aforementioned maxims of jurisprudence, he does not cite Cal. Civ. Code § 3509, which states that the "maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application." As a matter of statutory construction, the court is required to give effect to the more specific statute when two such statutes address the same subjects. HCSC-Laundry v. United States, 450 U.S. 1, 6, 101 S.Ct. 836, 839 (1981). The issue on which the court requests further briefing is whether the general maxims of jurisprudence contained in the California Civil Code provide grounds on which the court may disallow claims of exemption claimed under California's comprehensive law on the enforcement of judgments. Specifically, the court requests that the trustee identify any California state statutory (other than the maxims of jurisprudence) or legal authority which would provide for such a remedy.

The parties should consider and address in their supplemental briefing the longstanding choice of law principles enumerated by the Supreme Court in Erie Railroad Company v. Tompkins, 304 U.S. 64 (1938), commonly referred to as the "Erie Doctrine." Specifically, the Court in Erie held that in diversity of citizenship cases, the law to be applied in any case is the law of the state, as declared either by its legislature in a statute or by its highest court in a decision. Erie, 304 U.S. at 78. Although the court recognizes that a bankruptcy case is not based on diversity of citizenship, the Erie Doctrine has been held applicable to non-diversity cases as well. 19 C. Wright & A. Miller, Fed. Practice and Procedure § 4520 (2d ed. 2014) ("It frequently is said that the doctrine

of Erie Railroad Company v. Tompkins applies only in diversity of citizenship cases; this statement simply is wrong"). Federal courts have applied state law where there is pendent or supplemental jurisdiction. Id.; Felder v. Casey, 487 U.S. 131, 151 (1988) (the Erie Doctrine applies equally to state law claims that are brought to the federal courts through supplemental jurisdiction); Hoyos v. Telecorp Communications, Inc., 488 F.3d 1, 5 (1st Cir. 2007) ("a federal court sitting in diversity or exercising supplemental jurisdiction over state law claims must apply state substantive law, but a federal court applies federal rules of procedure to its proceedings"). The Erie Doctrine has also been applied to the interpretation of state exemption law in a bankruptcy case. 1256 Hertel Avenue Assoc., LLC v. Calloway, 761 F.3d 252, 261 n.5 (2nd Cir. 2014).

The court will issue a minute order.

3.	11-37711-B-7 HSM-9	DELANO RETAIL PARTNERS, LLC	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY 9-9-14 [127]

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 $47,114.25 in fees and $658.62 in costs, for a total of $47,772.87, for the period July 29, 2011 through March 31, 2013, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On July 19, 2011, the debtor filed a chapter 7 petition. By order entered on September 27, 2011 (Dkt. 26), the court authorized employment of the applicant as counsel for chapter 7 trustee. The applicant now seeks compensation for services for the period of April 1, 2013 through August 31, 2013. 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.

4.	14-27919-B-7 TOG-3	ROSA CEBALLOS	CONTINUED MOTION TO COMPEL ABANDONMENT 9-8-14 [14]

Tentative Ruling: This motion continued from September 23, 2014. It is in a preliminary posture 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.

5. 14-28423-B-7 GEORGE ANDERSON
NRZ-1

MOTION TO COMPEL ABANDONMENT
9-3-14 [17]

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

The motion is continued to October 21, 2014, at 9:32 a.m.

As the property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

6. 13-32529-B-7 GARY/DEBRA CAMPBELL
HSM-8

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY
9-3-14 [111]

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 $33,925.50 in fees and $487.75 in costs, for a total of $34,413.25, for the period October 22, 2013, through October 7, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On July 19, 2011, the debtor filed a chapter 7 petition. By order entered on December 9, 2013 (Dkt. 53), the court authorized employment of the applicant as counsel for chapter 7 trustee, with an effective date of employment of October 22, 2013. The applicant now seeks compensation for services for the period of October 22, 2013 through October 7, 2014.

The court disallows $390.00 in fees related to an entry in the billing records submitted by the applicant for an "anticipated" hearing on this application. As there is no opposition to the application, attendance at the hearing by the applicant is not necessary and the $390.00 anticipated charge for the hearing is not compensation for an actual or necessary service pursuant to 11 U.S.C. § 330(a).

Except as set forth above, the court finds that the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

7.	14-27733-B-7 PA-2	S.R. TRUCKING, MOVING & STORAGE, INC., A	MOTION TO SELL FREE AND CLEAR OF LIENS, MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S), MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S) AND MOTION TO ABANDON 9-9-14 [25]

Tentative Ruling: The motion is granted to the extent set forth herein:

1.) Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell the Sale Assets (as that term is defined in the motion) at public auction on an "as-is, where-is" basis in the manner described in the motion. Of the Sale Assets, the trustee is authorized to sell the Plastic Totes (the "Totes") listed in the supplement to line 29 of the debtor's Schedule B free and clear of any lien or interest in favor of WestAmerica Bank pursuant to 11 U.S.C. § 363(f)(4). Any lien or interest favor of WestAmerica Bank in the Totes shall transfer to the proceeds of sale of the Totes. The proceeds of sale of the Totes shall be held by the chapter 7 trustee in a segregated account containing only such proceeds pending further order of the court. The trustee is authorized to execute all documents necessary to effect the sale. The proceeds of the sale shall be administered for the benefit of the estate. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply.

2.) Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ West Auctions, Inc. ("West") as auctioneer for the chapter 7 trustee for the purpose of selling the Sale Assets. The trustee is also authorized pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016 to pay West compensation equal to twenty percent (20%) of the gross sale proceeds of the Sale Assets following the sale as a chapter 7 administrative expense. In addition to the foregoing commission, trustee is also authorized to pay West extraordinary expenses, if any, not to exceed $3,000.00, related to the transport, storage and and sale of the Property as a chapter 7 administrative expense.

3.) Pursuant to 11 U.S.C. § 554(a), the debtor's interest in the 1996 International box truck (the "International") described in the motion is deemed abandoned by the estate.

4.) Except as so ordered, the motion is denied.

With respect to the sale of the Sale Assets, the court grants the trustee's request for authorization to sell the Totes free and clear of a lien or interest in favor of West America Bank (the "Bank") because the trustee alleges without dispute that the debtor has scheduled a claim in favor of the Bank and secured by the Totes, and the trustee alleges without dispute that the debtor satisfied the obligation secured by the Totes prior to the date of the filing of the petition. The trustee also alleges without dispute that any lien in favor of WestAmerica was not perfected as of the date of the filing of the petition by operation of Cal. Comm. Code § 9515.

The court does not grant the trustee's request, to the extent he requests it, for authorization to sell the Sale Assets free and clear of "any" claims, liens or encumbrances. The court can only authorize a sale free and clear of a lien or interest if the trustee establishes one or more of the bases set forth in 11 U.S.C. § 363(f) with respect to the lien or interest. Furthermore, the court cannot either statutorily or constitutionally authorize a sale free and clear of a lien or interest the holder of which did not receive sufficient notice of the sale to enable it to object. 11 U.S.C. § 363(b); In re Center Wholesale, Inc., 759 F.2d 1440, 1448-49 (9th Cir. 1985); In re Moberg Trucking, Inc., 112 B.R. 362 (9th Cir. BAP 1990). Without any information regarding the identity of a lien holder, proper service on the lien holder, the amount secured by the lien, the value of the collateral which secures the lien and the statutory basis for a sale free and clear the court cannot authorize a sale free and clear under § 363(f).

With respect to employment and compensation of West, the court finds that West is a disinterested person as that term is defined in 11 U.S.C. § 101(14). The court also finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services to be rendered to the estate.

With respect to the abandonment of the International, the trustee alleges without dispute that the International, which is presently located in Hawaiian Gardens California, would not yield sufficient proceeds in a sale to outweigh the costs of transportation and storage of the International prior to the sale. The court finds that the International is of inconsequential value and benefit to the estate.

Counsel for the chapter 7 trustee shall submit an order which conforms to the foregoing ruling.

8.	14-27733-B-7 PA-3	S.R. TRUCKING, MOVING & STORAGE, INC., A	MOTION TO SELL FREE AND CLEAR OF LIENS, MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S), AND/OR MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S) 9-16-14 [39]

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.

9.	14-26936-B-11 UST-1	RAY PALMA	MOTION TO CONVERT TO CHAPTER 7 OR TO DISMISS CASE 9-3-14 [21]

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

The motion is granted, and this case is dismissed.

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

First, under section 1112(b)(2), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(1), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(3) requires that, absent the UST's consent or compelling circumstances that prevent the court from meeting the requirements of the subsection, the court must commence a hearing on the motion within thirty (30) days after it is filed and must decide the motion within fifteen (15) days after the hearing is commenced. This motion was filed on July 5, 2012, and the UST set this motion for hearing on August 7, 2012, the first available calendar date for a 28-day motion. The UST's action in setting the hearing more than thirty days after it was filed constitutes movant's consent to hearing the motion more than thirty days after it was filed. The decision on this matter will take place within fifteen-day days after the hearing is commenced.

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause."

The court finds, for the reasons stated in the motion, that the UST has established cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(F) and (H).

The court further finds that the debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. The debtor has failed to establish any of the requirements of section 1112(b)(2)(A) or (B). The debtor appeared at the preliminary status conference in this case on September 30, 2014, at 1:30 p.m. and represented to the court that he would not oppose the UST's request for dismissal.

The court finds that dismissal is in the best interests of creditors and the estate because there appear to be no non-exempt, unencumbered assets of the estate that could be administered for the benefit of creditors in a chapter 7 case.

The court will issue a minute order.

10. 14-26039-B-7 NEIL MATHIESEN — MOTION TO AVOID LIEN OF DISCOVER BANK
RLC-1 — 8-21-14 [29]

WITHDRAWN BY M.P.

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. The debtor withdrew the motion on September 22, 2014 (Dkt. 39).

11. 13-35749-B-7 ALEXANDER HOWARD — MOTION FOR LEAVE TO AMEND COMPLAINT
14-2084 DL-3 — 8-27-14 [44]
SACRAMENTO MUNICIPAL UTILITY DISTRICT V. HOWARD

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(2), the plaintiff is granted leave to amend the complaint commencing this adversary proceeding. The plaintiff shall file the amended complaint filed as Exhibit "A" to the motion so that it appears on the docket as an amended complaint, and may submit a proposed form of judgment which conforms to the order entered August 15, 2014 (Dkt. 38) granting the plaintiff's motion for entry of default judgment.

The court will issue a minute order.

12. 11-31467-B-7 MPD-13 | PRIVATE INDUSTRY COUNCIL OF BUTTE COUNTY | OBJECTION TO CLAIM OF PATRICK POWERS, CLAIM NUMBER 35 8-19-14 [116]

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

The objection is sustained. Claim no. 35 on the court's claims register (the "Claim") filed by Patrick Powers on September 13, 2011, in the amount of $5755.07 is disallowed except to the extent already paid by the chapter 7 trustee.

The trustee questions the validity of the Claim and requests complete disallowance of the Claim.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

In addition, the Ninth Circuit Bankruptcy Appellate Panel observed in Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005) that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Id. (emphasis added). Heath involved an objection to the claim of a credit card issuer by debtors in a chapter 7 case on the ground that the claim was not filed with sufficient supporting documentation. The debtors in Heath had made no formal or informal request for additional information from the claimant. In affirming the bankruptcy court's orders allowing the claims, the BAP held that simply objecting to a claim based on a lack of supporting documentation was not enough, and stated:

> [w]e would be faced with a very different case if, for example, Debtors' objections stated that they had written to a Creditor explaining that they questioned specific charges, or that during the slide into bankruptcy they had not reviewed or retained their monthly statements, and therefore they wanted the past twelve months' credit card statements to verify the Creditor's calculation of principal, interest, and other charges.

Id. at 437.

In this case, the Claim comprises a single page consisting of the official proof of claim form. The claimant stated on the Claim that the basis for the Claim is "services rendered" and asserted priority status for the Claim under 11 U.S.C. § 507(a)(5), which grants priority status to allowed unsecured claims for contributions to an employee benefit plan.

The court disagrees that the Claim is not entitled to prima facie

validity because it is not accompanied by supporting documentation or evidence. There is no requirement if the Federal Rules of Bankruptcy Procedure that a claim under 11 U.S.C. § 507(a)(5) be accompanied by supporting documentation. Fed. R. Bankr. P. 3001(c) identifies the circumstances under which supporting information is required, and the fact that a claimant asserts priority status for a claim is not one of those circumstances. Therefore, the claim has prima facie validity.

However, the trustee has shown evidence that he sent an informal request in the form of a letter to the claimant requesting additional information regarding how the claimant calculated the Claim and why the claimant believes he is owed that amount. The trustee's letter also suggested the type of documentation that claimant could provide to substantiate the Claim. The trustee alleges without dispute that the claimant did not respond to his request. The claimant's failure to respond to the trustee's inquiry information sufficient to allow the trustee to evaluate the Claim rebuts the prima facie validity of the Claim. By failing to respond to this objection, the claimant has failed to prove the claim. Accordingly, the Claim is disallowed.

The court will issue a minute order.

13. 11-31467-B-7 MPD-14 — PRIVATE INDUSTRY COUNCIL OF BUTTE COUNTY — OBJECTION TO CLAIM OF CHIA YANG, CLAIM NUMBER 34 8-20-14 [121]

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

The objection is sustained. Claim no. 34 on the court's claims register (the "Claim") filed by Chia Yang on September 13, 2011, shall be allowed as a priority claim pursuant to 11 U.S.C. § 507(a)(4)(A) in the amount of $1128.75, with the remainder of the claim in the amount of $525 be allowed as a general unsecured claim except to the extent already paid by the trustee in excess of the dividend to general unsecured creditors. Except as so ordered, the objection is overruled.

The objection is sustained and the Claim allowed in the foregoing amounts for the reasons set forth in the trustee's objection.

The court will issue a minute order.

14. 11-31467-B-7 MPD-15 — PRIVATE INDUSTRY COUNCIL OF BUTTE COUNTY — OBJECTION TO CLAIM OF CHELSIE REINKING, CLAIM NUMBER 64 8-20-14 [126]

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

The objection is sustained. Claim no. 64 on the court's claims register

(the "Claim") filed by Chelsie Reinking on October 24, 2011, shall be allowed as a priority claim pursuant to 11 U.S.C. § 507(a)(4)(A) in the amount of $207.86, with the remainder of the claim in the amount of $4,502.40 be allowed as a non-priority unsecured claim and treated as penalty under 11 U.S.C. § 726(a)(4) for the purposes of distribution of assets of the estate, except to the extent already paid by the trustee under 11 U.S.C. § 726(a)(2). Except as so ordered, the objection is overruled.

The objection is sustained and the Claim allowed in the foregoing amounts for the reasons set forth in the trustee's objection.

The court will issue a minute order.

15. 13-34802-B-13 DARRYL CARTER
14-2144
CARTER V. BARBER

MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-4-14 [31]

Tentative Ruling: The motion is continued to a final evidentiary "prove up" hearing on December 5, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, evidence shall be taken on the issue of actual damages including, without limitation, costs and punitive damages, under 11 U.S.C. § 362(k) for the defendant's willful violation of 11 U.S.C. § 362(a) which occurred between May 14, 2014, and July 14, 2014. The court at that time will also rule on the merits of the plaintiff's various requests for injunctive relief. This is a core proceeding which the court may hear and determine pursuant to 28 U.S.C. § 157(b)(2)(G). The plaintiff's request for a trial by jury is denied.

On or before November 28, 2014, 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 plaintiff's binder tabs shall be consecutively numbered, commencing at number 1. The defendant's binder tabs shall be consecutively lettered, commencing at letter A. On or before November 28, 2014, 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 Plaintiff's Motion for Entry of Default Judgment. 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 finds that the plaintiff has in his adversary complaint sufficient pled a cause of action for a willful violation of the automatic stay pursuant to 11 U.S.C. § 362(k)(1). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977). However, in this instance a "prove up" hearing is required to determine to what, if any, damages the plaintiff is entitled. The defendant may submit evidence in opposition to an award of damages. When default was entered against the defendant on August 27, 2014 (Dkt. 25), he lost the right to participate in this adversary proceeding except to seek relief from the default or to contest damages. In re Johnson, 2010 WL 9475505, slip op. at 2 (Bankr. E.D. Cal. 2010) ("A party who has appeared in an action, even though they have not filed a responsive pleading, is entitled to notice of the hearing and to address limited issues with respect to the application for entry of default judgment"); Geddes, 559 F.2d at 560 ("Appellees' defaults established their respective liabilities, but not the extent of the damages to the plaintiff class"); Fed. R. Civ. P. 8(b)(6).

The court will issue a minute order.

16. 14-27089-B-7 JOSEPH ELFAR — MOTION FOR EXAMINATION
TSL-1 — 9-19-14 [18]

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.

17. 14-27089-B-7 JOSEPH ELFAR — MOTION FOR EXAMINATION
TSL-2 — 9-19-14 [21]

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.

18. 14-26449-B-7 ROBERTO/TARA AVILA — MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
CAH-1 — 9-2-14 [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), subject to

the provisions of 11 U.S.C. § 349. The judicial lien in favor of American Express Bank, FSB, recorded in the official records of Sacramento County, Book Number 20131022, Page 0142, is avoided as against the real property located at 7441 Stella Way, Sacramento, California 95822 (the "Property").

The Property had a value of $150,000.00 as of the date of the petition. The unavoidable liens total $200,605.83. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), 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 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 Property and its fixing is avoided.

The court will issue a minute order.

19. 14-26449-B-7 ROBERTO/TARA AVILA — MOTION TO AVOID LIEN OF DISCOVER BANK
CAH-2 — 9-2-14 [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), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Discover Bank, recorded in the official records of Sacramento County, Book Number 20140122, Page 0823, is avoided as against the real property located at 7441 Stella Way, Sacramento, California 95822 (the "Property").

The Property had a value of $150,000.00 as of the date of the petition. The unavoidable liens total $200,605.83. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), 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 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 Property and its fixing is avoided.

The court will issue a minute order.

20. 12-27767-B-11 DOMINIQUE ENGEL
MLA-7

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ABDALLAH LAW GROUP, PC FOR MITCHELL L. ABDALLAH, DEBTOR'S ATTORNEY(S)
9-10-14 [277]

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.

21. 12-30771-B-7 JOSEPH/REGINA MILLER
DNL-5

MOTION FOR COMPENSATION FOR GONZALES AND SISTO LLP, ACCOUNTANT(S)
9-8-14 [114]

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. § 330 and Federal Rule of Bankruptcy Procedure 2016, the application is approved on a first and final basis in the amount of $1,197.00 in fees and $5.80 in expenses, for a total of $1,202.80, for services rendered and costs incurred during the period of November 15, 2013, through and including July 15, 2014. The foregoing amount is payable to Gonzales and Sisto, LLP ("G&S") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtors commenced the above-captioned case by filing a voluntary petition under chapter 11 on June 6, 2012. By order entered February 7, 2013 (Dkt. 44), the case was converted to one under chapter 7. By order entered December 16, 2013 (Dkt. 105), the court authorized the chapter 7 trustee to employ G&S as accountant for the bankruptcy estate, with an effective date of employment of November 15, 2013. The chapter 7 trustee now seeks approval of compensation for G&S for services rendered and costs incurred during the period of November 15, 2013, through and including July 15, 2014. The court finds that the approved fees are reasonable compensation for actual, necessary services.

The court will issue a minute order.

22. 12-30771-B-7 JOSEPH/REGINA MILLER
DNL-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH AND CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEE'S ATTORNEY(S)
9-8-14 [119]

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. § 330 and Federal Rule of Bankruptcy Procedure 2016, the application is approved on a first and final basis in the amount of $17,305.00 in fees and $370.40 in expenses, for a total of $17,675.40, for services rendered and costs incurred during the period of March 22, 2013, through and including July 15, 2014. The foregoing amount is payable to Desmond, Nolan, Livaich & Cunningham ("DNLC") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtors commenced the above-captioned case by filing a voluntary petition under chapter 11 on June 6, 2012. By order entered February 7, 2013 (Dkt. 44), the case was converted to one under chapter 7. By order entered April 9, 2013 (Dkt. 57), the court authorized the chapter 7 trustee to employ DNLC as general counsel for the bankruptcy estate, with an effective date of employment of March 22, 2013. The chapter 7 trustee now seeks approval of compensation for DNLC for services rendered and costs incurred during the period of March 22, 2013, through and including July 15, 2014. The court finds that the approved fees are reasonable compensation for actual, necessary services.

The court will issue a minute order.

23. 14-20798-B-7 BABY SIGNS, INC.
ASF-2

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
9-4-14 [51]

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 court's order entered February 19, 2014 (Dkt. 14) (the "Order") will be amended to specify an effective date of employment of January 30, 2014. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves on a first and final basis compensation for the bankruptcy estate's accountant, Gabrielson & Company ("G&C"), in the amount of $5,416.50 in fees and $177.10 in expenses, for a total of $5,593.60, for services rendered and costs incurred during the period of January 30, 2014, through and including September 3, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On January 29, 2014, the debtor commenced the above-captioned bankruptcy

case by filing a voluntary petition under chapter 7 (Dkt. 1). Pursuant to the Order, the court granted the trustee's request to employ G&C as accountant for the bankruptcy estate. The Order does not specify an effective date of employment, so G&C's employment was effective February 19, 2014. The application for an order authorizing G&C's employment was filed on January 31, 2014 (Dkt. 5). This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving G&C's employment retroactive to January 30, 2014, the first date on which G&C rendered services to the trustee according to the attached billing records (Dkt. 55). The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988)(extraordinary or exceptional circumstances to justify retroactive employment). In this case, the court grants an effective date of January 30, 2014.

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

G&C shall submit an amended form of employment order which is identical to the Order, but which shall in addition specify an effective date of employment of January 30, 2014. Upon entry of the amended employment order, the court will issue a minute order granting the motion as set forth above.