UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 22, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	17-21700-D-12 JPJ-1	PAUL SCHMIDT	MOTION TO DISMISS CASE 10-24-17 [119]
2.	12-30407-D-7 MHK-3	DAVID/KATHLEEN HANSON	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 10-25-17 [48]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption of what is described in their amended Schedule C as a "mesh class-action lawsuit settlement" valued at $90,000. (According to the trustee's evidence, this figure is net of attorney's fees and costs.) The debtors have filed opposition. The funds are, as last known to the trustee, still held by the claims administrator for the class

action settlement who, the trustee believes, intends to hold them pending an order of this court. For the following reasons, the objection will be sustained.

The debtors commenced this case in May of 2012, five and a half years ago. They did not list the class action claim or any claim against anyone on their schedules and, where required on their statement of financial affairs to list all suits to which they or one of them was a party, they answered "None." They utilized the set of exemptions set forth in Cal. Code Civ. Proc. § 703.140(b)[1] to exempt, among other things, $6,848 in equity in a vacant lot in North Carolina, under subd. (b)(1), and, under subd. (b)(5), the so-called "wild-card" exemption, money in the bank, artwork, art equipment, a vehicle, and landlord and utility security deposits, in exempt values totaling another $12,570. The debtors received their discharge, the trustee filed a no-asset report, and the case was closed in May of 2013. As a result, all property the debtors had listed on their bankruptcy schedules was abandoned back to them by operation of law.

Over four years later, on July 28, 2017, the debtors filed amended Schedules B and C, adding the $90,000 in class action settlement proceeds to both schedules and claiming it as exempt under § 704.140. The artwork and art equipment, which they had valued at $5,000 and claimed as exempt under the wild card in 2012, were omitted from the amended schedules entirely. The debtors changed their exemption claims of the money in the bank and the security deposits, a total of $6,570, to § 704.070 (exemption of paid earnings) and of the vehicle to § 704.010.

In the meantime, the debtors had sold the vacant lot, netting approximately $12,000. If the debtors had utilized the exemptions available under § 704.010, et seq., in 2012, they would have been unable to exempt their equity in that lot. Further, if they had used those exemptions in 2012, and thus, had not had the wild-card exemption available to them, it is likely they would have also been unable to exempt the money in the bank, $5,000, and, possibly, their landlord and security deposits, $1,570, as well. At the time the petition was filed, in 2012, the debtors had been retired for ten years and seven years, respectively, and their only income in the prior two years had been from social security and state and county retirement systems. Thus, it is doubtful the money in the bank, if not also the security deposits, could have been traced to paid earnings.[2] In short, if the debtors had chosen the § 704.010, et seq. set of exemptions in 2012, so as to claim as exempt their interest in the class action lawsuit under § 704.140, it is likely they would have been unable to exempt significant other assets the trustee might then have liquidated for the benefit of creditors.

Instead, as the trustee points out, the debtors did not disclose the class action lawsuit and did not claim it as exempt, and the trustee did not administer any of their scheduled assets. Between that time and the time they amended their exemptions, switching to an entirely different set of exemptions, the debtors had disposed of the vacant lot, which clearly would not have been exempt under the § 704.010, et seq. set of exemptions, had apparently disposed of the artwork and art equipment, and may have disposed of the $5,000 in the bank as well. The court concludes, based on each of the trustee's three legal theories, that the trustee is correct in his conclusion that the debtors want to have their cake and eat it too. In other words, if their amended exemptions are allowed, they will have had the benefit of both sets of exemptions, whereas California law permits them the benefit of only one or the other.

The trustee analyzes the facts under two different theories of California law – election of remedies and equitable estoppel, and the court accepts and adopts the trustee's analysis herein as to both. The court also agrees with the trustee that the state law on those theories takes the case out of the scope of the Supreme

Court's holding in Law v. Siegel, 134 S. Ct. 1188 (2014). In addition, the trustee contends, and the court agrees, that § 522(g) prevents the debtors from claiming the lawsuit proceeds as exempt; the court adopts the trustee's analysis and reasoning on that issue as well. For these reasons, the court will sustain the trustee's objection and disallow the debtors' claim of exemption of the lawsuit proceeds. Thus, the court need not decide the fourth issue raised by the trustee – whether the proceeds are necessary for the debtors' support, as required by § 704.140.

The debtors' opposition is weak at best and disingenuous at worst. First, it is unsupported by any declaration or other evidence. Even if, however, the debtors had purported to substantiate their attorney's conclusions by way of declaration, the court would be unpersuaded. The opposition states, "Debtors did not initially disclose or exempt this matter since, at the time, they did not think they had a claim. They did not even recall signing a class-action contract, much less believe they would receive any money from a potential settlement." Opp., ¶ 2. They add they initially used the § 703.140(b) exemptions "since they did not realize their class-action claim" (¶ 5) and "[h]ad debtors understood that they had such a claim, they could have exempted it in its entirety. But they didn't know." ¶ 6.

These statements are not credible. Debtor Kathleen Hanson signed an employment contract with the law firm representing the class action plaintiffs on August 4, 2011; the debtors filed this bankruptcy case on May 31, 2012. If the debtors were to testify as set forth in their opposition, and if the court were to accept that testimony as sufficient to overrule the trustee's objection, any debtor with a personal injury claim could decide not to disclose it in his or her bankruptcy case because he could later simply contend he did not think he had a claim or did not think he would ever receive anything on the claim, and thereby accomplish what the debtors are seeking here – a double-dipping in terms of the available exemption schemes. Accepting such conclusory testimony in these circumstances would effectively eviscerate a debtor's duty, which is the quid pro quo for his discharge, to file true, complete, and accurate schedules, listing all his assets.

For the reasons stated, the objection will be sustained and the exemption will be disallowed. The debtors request in their opposition they "be allowed to maximize their personal injury protection under Section 703" (Opp., ¶ 10), which they believe would allow them to retain about $24,000 of the lawsuit proceeds. The debtors have made no such claim of exemption at this time and the issue is therefore not properly before the court. Finally, the debtors state they "have recently been engaged in a medical malpractice case involving the death of their daughter and, as such, have been unable to devote their resources or efforts to the defense of this motion." Id., ¶ 11. The court is sympathetic to the debtors' loss but concludes that even a declaration attesting to the allegations in the opposition would be insufficient to support their exemption claim.

The court will hear the matter.

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1 All statutory references are to the California Code of Civil Procedure.

2 The debtors claim in their opposition to this objection that they could have exempted the money in the bank and the security deposits "as part of their social security retirement income . . . ." Debtors' Opp., DN 56 ("Opp."), ¶ 8. The debtors have not provided a citation to an applicable exemption statute.

3. 17-23909-D-7 LT-1 — EARLEEN DUNCAN BOTTINI — MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 10-10-17 [17]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

4. 17-23909-D-7 LT-2 — EARLEEN DUNCAN BOTTINI — MOTION TO AVOID LIEN OF PERSOLVE, LLC 10-10-17 [24]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

5. 17-26411-D-7 JEG-1 — SHELBY CRECELIUS — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-24-17 [10]
SUSAN POSNER AND JOHN FUND, ET AL. VS.

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to file a separate notice of hearing as required by LBR 9014-1(d)(3); and (2) moving party failed to serve the debtors. As a result of these procedural and service defects, the court will deny the motion by minute order. No appearance is necessary.

6. 11-31916-D-7 HCS-3 — ELSIDDIG ELHINDI AND ROBIN JONES — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND/OR MOTION FOR COMPENSATION FOR SPECIAL COUNSEL, ETC. 10-25-17 [54]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

7. 15-25526-D-7 AR BUSINESS GROUP, INC. MOTION TO AMEND
DMB-3 10-25-17 [65]

Tentative ruling:

This is the motion of creditors Marshaun Keith Tate and Shaun Giovanni Tate (the "Tate creditors") to modify an earlier order of this court granting them relief from the automatic stay to proceed in a state court action that was pending when this bankruptcy case was filed. Praetorian Insurance Company ("Praetorian") has filed opposition. For the following reasons, the court will grant the motion.

On November 18, 2015, this court granted the Tate creditors' motion for relief from stay to permit them to proceed in a pending state court action against the debtor and others arising out of an auto accident, with any recovery by the Tate creditors against the debtor to be limited to insurance proceeds. The order was prepared by the Tate creditors' counsel and specifically provided that "the automatic stay be lifted and modified for the purpose of allowing the [Tate] creditors to proceed only against the debtor[']s insurance carrier in the Litigation seeking damages for personal injury . . . ." Order filed Nov. 25, 2015, DN 42, at 1:23-25 (emphasis added). The order added that the Tate creditors' recovery against the debtor would be limited "to the amount of the insurance proceeds available to the debtor in that litigation." Id. at 2:4-5.

According to the Tate creditors' present motion, the state court has interpreted this court's order, and in particular the language underlined above, to mean the Tate creditors may proceed only against the insurance company and not against the named defendants in the state court action. As the Tate creditors point out, that result would be illogical because, under California procedure, injured parties proceed against the individuals and entities that allegedly injured them, not against those individuals' and entities' insurance companies. The insurance companies are typically brought into the action by the defendants.

In any event, this court has no hesitation in concluding that the relief it intended to award by way of the November 25, 2015 order was relief from the automatic stay to permit the Tate creditors to proceed in the state court against named defendant AR Business Group, Inc. (the debtor in this bankruptcy case), with any recovery against AR Business Group, Inc. to be limited to insurance proceeds available to it. The court has the power, pursuant to Fed. R. Civ. P. 60(b)(6), incorporated herein by Fed. R. Bankr. P. 9024, to grant the Tate creditors' motion on the ground that the relief, as it was stated in the November 25, 2015 order, was not the relief the court intended. Thus, the court will grant the motion, amend the order to grant the relief just described, and provide that the relief, as correctly stated, has been in effect retroactive to November 25, 2015.

Praetorian states in opposition that the federal district court in Praetorian's action to determine coverage has ruled that the debtor's policies with Praetorian did not provide coverage for the Tate creditors' injuries and that Praetorian does not have a duty to defend the debtor. The Tate creditors have appealed. Praetorian contends the debtor has received a bankruptcy discharge and "the stay of proceedings against [the debtor] should be maintained to afford it protection under 11 U.S.C. § 524" pending the outcome of the appeal. Praetorian's Opp., filed Nov. 8, 2017, at 1:25-2:1. In Praetorian's view, "[o]therwise, Discharged Debtor AR Business Group will have to incur legal fees to defend itself or the underlying case will proceed even in the absence of insurance. Neither makes any practical sense." Id. at 2:2-4.

Praetorian's argument is foreclosed in its entirety by the fact that a debtor

that is not an individual cannot receive a discharge in a chapter 7 case. § 727(a)(1). The debtor in this case is a corporation; thus, it cannot receive a discharge in this case and did not receive one. The cases cited by Praetorian that involved corporate debtors were cases under chapter 11, in which a corporate debtor may receive a discharge pursuant to a confirmed plan. The present case began and was closed as a chapter 7 case; it was never converted to or from chapter 11. Section 524, cited by Praetorian, sets forth the effects of a discharge; it has no application where a debtor has not received a discharge. The automatic stay in this case, as to the debtor, terminated on May 17, 2017, the day the case was closed. § 362(c)(2)(A).[1] From that date forward, there has been no automatic stay in existence at all, as regards the debtor. The reopening of the case did not operate to revive the automatic stay.[2]

For the reasons stated, the motion will be granted. The court will hear the matter.

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1 "The automatic stay terminates upon closing except with respect to property that retains its status as 'property of the estate' after closing." Menk v. Lapaglia (in Re Menk), 241 B.R. 896, 911 (9th Cir. BAP 1999). The exception has no application here: what is involved here are claims against the debtor, not claims of the debtor or the estate.

2 "[T]o the extent that the automatic stay expired in conjunction with closing, it does not automatically spring back into effect. If protection is warranted after a case is reopened, then an injunction would need to be imposed." Menk, 241 B.R. at 914.

8. 15-25526-D-7 DMB-4 — AR BUSINESS GROUP, INC. — MOTION TO AMEND 10-25-17 [69]

Tentative ruling:

This is the motion of creditors Eliseo Quintero, Sr. and Aida Quintero (the "Quintero creditors") to modify an earlier order of this court granting them relief from the automatic stay to proceed in a state court action that was pending when this bankruptcy case was filed. Praetorian Insurance Company ("Praetorian") has filed opposition. For the following reasons, the court will grant the motion.

On November 18, 2015, this court granted the Quintero creditors' motion for relief from stay to permit them to proceed in a pending state court action against the debtor and others arising out of an auto accident, with any recovery by the Quintero creditors against the debtor to be limited to insurance proceeds. The order was prepared by the Quintero creditors' counsel and specifically provided that "the automatic stay be lifted and modified for the purpose of allowing the [Quintero] creditors to proceed only against the debtor[']s insurance carrier in the Litigation seeking damages for personal injury . . . ." Order filed Nov. 25, 2015, DN 43, at 1:25-2:2 (emphasis added). The order added that the Quintero creditors' recovery against the debtor would be limited "to the amount of the insurance proceeds available to the debtor in that litigation." Id. at 2:7-8.

According to the Quintero creditors' present motion, the state court has interpreted this court's order, and in particular the language underlined above, to mean the Quintero creditors may proceed only against the insurance company and not against the named defendants in the state court action. As the Quintero creditors point out, that result would be illogical because, under California procedure,

injured parties proceed against the individuals and entities that allegedly injured them, not against those individuals' and entities' insurance companies. The insurance companies are typically brought into the action by the defendants.

In any event, this court has no hesitation in concluding that the relief it intended to award by way of the November 25, 2015 order was relief from the automatic stay to permit the Quintero creditors to proceed in the state court against named defendant AR Business Group, Inc. (the debtor in this bankruptcy case), with any recovery against AR Business Group, Inc. to be limited to insurance proceeds available to it. The court has the power, pursuant to Fed. R. Civ. P. 60(b)(6), incorporated herein by Fed. R. Bankr. P. 9024, to grant the Quintero creditors' motion on the ground that the relief, as it was stated in the November 25, 2015 order, was not the relief the court intended. Thus, the court will grant the motion, amend the order to grant the relief just described, and provide that the relief, as correctly stated, has been in effect retroactive to November 25, 2015.

Praetorian states in opposition that the federal district court in Praetorian's action to determine coverage has ruled that the debtor's policies with Praetorian did not provide coverage for the Quintero creditors' injuries and that Praetorian does not have a duty to defend the debtor. The Quintero creditors have appealed. Praetorian contends the debtor has received a bankruptcy discharge and "the stay of proceedings against [the debtor] should be maintained to afford it protection under 11 U.S.C. § 524" pending the outcome of the appeal. Praetorian's Opp., filed Nov. 8, 2017, at 1:25-2:1. In Praetorian's view, "[o]therwise, Discharged Debtor AR Business Group will have to incur legal fees to defend itself or the underlying case will proceed even in the absence of insurance. Neither makes any practical sense." Id. at 2:2-4.

Praetorian's argument is foreclosed in its entirety by the fact that a debtor that is not an individual cannot receive a discharge in a chapter 7 case. § 727(a)(1). The debtor in this case is a corporation; thus, it cannot receive a discharge in this case and did not receive one. The cases cited by Praetorian that involved corporate debtors were cases under chapter 11, in which a corporate debtor may receive a discharge pursuant to a confirmed plan. The present case began and was closed as a chapter 7 case; it was never converted to or from chapter 11. Section 524, cited by Praetorian, sets forth the effects of a discharge; it has no application where a debtor has not received a discharge. The automatic stay in this case, as to the debtor, terminated on May 17, 2017, the day the case was closed. § 362(c)(2)(A).[1] From that date forward, there has been no automatic stay in existence at all, as regards the debtor. The reopening of the case did not operate to revive the automatic stay.[2]

For the reasons stated, the motion will be granted. The court will hear the matter.

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1 "The automatic stay terminates upon closing except with respect to property that retains its status as 'property of the estate' after closing." Menk v. Lapaglia (in Re Menk), 241 B.R. 896, 911 (9th Cir. BAP 1999). The exception has no application here: what is involved here are claims against the debtor, not claims of the debtor or the estate.

2 "[T]o the extent that the automatic stay expired in conjunction with closing, it does not automatically spring back into effect. If protection is warranted after a case is reopened, then an injunction would need to be imposed." Menk, 241 B.R. at 914.

9. 17-24444-D-11 RAMON LOPEZ
MF-2

OBJECTION TO HOMESTEAD EXEMPTION
10-23-17 [103]

Tentative ruling:

This is the objection of Jaime Lopez (the "creditor") to the debtor's claim of exemption in the real property at 4752 N. Ijams Rd., Stockton, California (the "property"). The debtor has filed opposition. For the following reasons, the court intends to sustain the objection.

The creditor objects to the debtor's claim of a homestead exemption on the ground the debtor did not reside in the property on the date this case was filed. The creditor's evidence is (1) a series of photographs of the interior and exterior of the property the creditor testifies he took on October 13, 2017; and (2) his testimony, as follows: "I am informed and believe that the Debtor resides at another location and has not resided at the Property since prior to the petition date. The Debtor has so informed me from time to time in general conversation." J. Lopez Decl., ¶ 3.

The photographs demonstrate, virtually unequivocally, that no one was physically residing in the house on the day the photographs were taken. The house is empty of furniture of any kind. Although there is a refrigerator in the kitchen, it still has the invoice taped to the front and protective cellophane on the handles. Also, although there is a photograph that includes what appears to be an oven, it is still wrapped in cellophane and has not been installed. There are construction materials everywhere. There is nothing at all to suggest that anyone lives in the house or could live in it.

In opposition to the objection, the debtor testifies he acquired the property in 1993 and "it has been my residence ever since." Debtor's Decl., DN 115, ¶ 4. He states he married in 2001 and the property "is now, and has [at] all times since we acquired it, been our primary and sole residence." ¶ 5. The debtor testifies he and his wife receive all of their mail there and use the address "for our income taxes, our driver's licenses, our voter registration, and all other legal and personal correspondence." ¶ 6. He makes the mortgage payments on the property and pays its property taxes and insurance premiums.

However, the debtor also testifies he and his wife began remodeling the property in March 2007; that is, over ten years ago. He states major renovations were needed; they had to "essentially rebuild" the property; and they have not had the money to hire a contractor to do the work all at once, but instead, the debtor and his friends have done the work "very slow[ly]." ¶ 10. Finally, "[t]he work is almost complete, and my family and I will be moving back into the Property shortly." Id. In the meantime, they have been living rent-free in a house owned by the debtor's brother-in-law. Relying on case law to the effect that an intention to return to a property as one's residence may, depending on the circumstances, qualify a debtor for a homestead exemption, the debtor concludes, "It is now and always has been our intent to move back into the Property once the renovations are complete." ¶ 12.

A "homestead," for purposes of California's exemption laws, is defined as the principal dwelling in which the debtor or his or her spouse resided on the date the judgment creditor's lien attached to the dwelling and resided there continuously until the date the court determines the dwelling is a homestead. Cal. Code Civ. Proc. § 704.710(c). "Dwelling," in turn, means "a place where a person resides . .

. ." § 704.710(a). "The essential factors in determining residency for homestead purposes are physical occupancy of the property and the intent to live there." In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992), citing Ellsworth v. Marshall, 196 Cal. App. 2d 471, 474 (1961); see also Kelley v. Locke (In re Kelley), 300 B.R. 11, 21 (9th Cir. BAP 2003).

A temporary absence from a residence is not necessarily a bar to a homestead exemption. Dodge, 138 B.R. at 607. The applicable code section, CCP § 704.710(c), was amended in 1983 to delete the word "actually" from before the word "reside." The purpose was to "to avoid a possible construction that a person temporarily absent (such as a person on vacation or in the hospital) could not claim a dwelling exemption for his or her principal dwelling, . . . , merely because the person is temporarily absent, even though the dwelling is the person's principal dwelling and residence." See In re Bruton, 167 B.R. 923, 926 (Bankr. S.D. Cal. 1994), citing 17 Cal.L.Rev.Comm. Reports 854 (1983).

Debtors have been held to be temporarily absent from their home, and thus, entitled to a homestead exemption where they rented an apartment in another city for employment purposes, returning to their home on weekends and holidays. See In re Pham, 177 B.R. 914, 919 (Bankr. C.D. Cal. 1994); Bruton, 167 B.R. at 926; Dodge, 138 B.R. at 607. On the other hand, the exemption has been disallowed where debtors have moved from their home, to be closer to their school or because they could no longer afford the mortgage, and leased out their home to tenants. See In re Anderson, 824 F.2d 754, 757 (9th Cir. 1987); In re Yau, 115 B.R. 245, 249 (Bankr. C.D. Cal. 1990)).

The debtor here has cited no case, and the court has found none, supporting the proposition that absence from a home for a period of over ten years, or any period close to that long, can support a homestead exemption, regardless of the debtor's self-serving post-petition statement of an intention to re-occupy the home as his residence. In fact, the debtor's position would require the court to overlook entirely one of the two factors the court is to consider: physical occupancy of the property and the debtor's intention to live there. The debtor has given the court no basis on which to ignore the initial factor – physical occupancy. Further, the debtor's careful phrasing gives the court pause. Rather than stating the date the family actually moved out of the property and into the debtor's brother-in-law's house, the debtor used the phrase "since the work has taken place," thereby virtually admitting they moved out over ten years ago.

The court is also troubled by the debtor's failure to disclose his circumstances fully on his petition, schedules, and statements. On his original and amended petitions, the debtor was required to state not his "residence," not his "homestead" address, but "Where you live." On both petitions, he gave the Ijams Road address, despite now acknowledging he did not live there on the petition date. On both petitions, the debtor was also required to answer the question, "Do you rent your residence?" On both, he answered no. He would apparently now offer the self-serving argument that he answered no because he pays no rent. He also did not, apparently, list his brother-in-law on his Schedule G as the other party to an executory contract or unexpired lease, again, he will likely argue, because there is no formal lease and he pays no rent.[1]

Finally, on his statement of financial affairs, the debtor answered "No" to the question, "During the last 3 years, have you lived anywhere other than where you live now?" In short, there is nothing in the record to even hint the debtor and his family do not physically reside in the property and have not physically resided in it for over ten years. In fact, the debtor's answers – purportedly confirming again and again that he "lives in" the property – would lead anyone to conclude he

actually occupies the property as his residence.

For exemptions claimed under California exemption law, as is the debtor's in this case, the burden of proof is on the debtor. Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (9th Cir. BAP 2016); see also In re Tallerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015). For the reasons stated, the court concludes the debtor has failed to satisfy his burden of demonstrating the property was his "principal dwelling," and therefore, his "homestead," as of the petition date despite his alleged long-standing intention to return to it as his residence. Accordingly, the objection will be sustained. The court notes the debtor has not filed a separate statement of disputed material facts, and thus, has consented to proceeding on the basis of the written record. See LBR 9014-1(g)(3). The court will hear the matter.[2]

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1 There are five parties to lease agreements listed on the debtor's Schedule G – all having numerically-related addresses on West Lane in Stockton, where the debtor operates an auto body shop.

2 The creditor's suggestion that "the Debtor is apparently using cash collateral [of] Rabobank, N.A.'s lien against another property to improve this Property post-petition" (Obj., ¶ 5) is not relevant to the matter at hand and the court does not intend to address it at the hearing.

10.	17-24546-D-7 ALF-1	DALE/LORI LYNCH	MOTION TO AVOID LIEN OF INVESTMENT RETRIEVERS, INC. 10-23-17 [23]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

11.	17-26349-D-7 EAT-1 WELLS FARGO BANK, N.A. VS.	JESUS ESTRADA	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-18-17 [13]

Final ruling:

Motion withdrawn by moving party on November 2, 2017. Matter removed from calendar.

12. 17-25155-D-7 LINDSEY LILLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 10-13-17 [15]
CAB WEST, LLC VS.

Final ruling:

This matter is resolved without oral argument. This is CAB West, LLC's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

13. 17-22056-D-11 JAMES MCCLERNON — MOTION FOR CONTEMPT AND/OR MOTION FOR AN AWARD OF DAMAGES
WT-4 — 10-25-17 [106]

Tentative ruling:

This is the motion of McClernon General Engineering, Inc. ("MGE") for an order holding the debtor in civil contempt for failing to obey this court's order for an examination under Fed. R. Bankr. P. 2004. The debtor has filed opposition. For the following reasons, the motion will be granted.

MGE's counsel's declaration authenticates a series of written communications with the debtor's counsel and those communications refer to several actual conversations the parties' counsel have had concerning the outstanding subpoena for the production of documents issued under the court's Rule 2004 order. In addition, the parties' counsel have participated in a discovery conference. The court finds MGE has sufficiently established that it in good faith conferred with the debtor in an effort to obtain the documents without court intervention.

> **The standard for finding a party in civil contempt is well settled: "The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." FTC v. Affordable Media, LLC, 179 F.3d 1228, 1239 (9th Cir. 1999), quoting Stone v. City & County of San Francisco, 968 F.2d 850, 856 n.9 (9th Cir. 1992) (internal citations omitted). "[The contemnors] must show they took every reasonable step to comply." Stone, 968 F.2d at 856 n.9.**

On June 22, 2017, MGE's counsel served on the debtor's counsel a subpoena requiring the production of listed documents on July 10, 2017. As of the date this motion was filed, October 25, 2017, the debtor had produced only some of the documents. The court has examined the list of documents sought by MGE, along with a list of incomplete or evasive answers MGE claims the debtor gave at two sessions of the meeting of creditors,[1] and concludes that the questions asked and the documents requested are well within the range of information a debtor-in-possession has a duty to produce promptly, if not immediately. Instead, partial and evasive answers were given at the meeting of creditors, which highlighted the need for production of the documents, yet the debtor has produced documents in dribs and drabs, and as of the date he filed his opposition to this motion, had still, by his own acknowledgment, not produced all of them. The opposition states, for example, the debtor "is

providing copies of title documents for [his] three vehicles, boat and trailer" (Debtor's Opp., DN 117 ("Opp."), ¶ 7), "is providing the lease agreement for his rented home" (¶ 9),[2] "is producing a transcript of payments received relating to unemployment" (¶ 22), and "has recently received a number of documents from his California State Disability counsel and will be providing those to the requesting party." ¶ 23. These are documents that should have been readily available to the debtor and should have been produced immediately. Yet even at this late date, the debtor does not so much as state when he "is providing" or "will be providing" them and offers no explanation for his failure to do so to date.

There are several categories of documents the debtor should be able to produce, but instead, he states he does not have them and suggests others from whom MGE might obtain the documents. For example, he states he has produced his federal and state tax returns for 2014, 2015, and 2016, but does not have copies of the returns for prior years in his possession. He states he has requested copies of the state returns from the Franchise Tax Board but has been told it "does not maintain copies older than three and one half years." Opp., ¶ 1. The debtor does not state he has sought copies of the federal returns from the IRS. The debtor states he does not have supporting documents for his tax returns, such as W-2s, 1099s, or K-1s, but "believes that Creditors['] subpoena of his tax preparer" and of Road Hog Enterprises, Inc.'s tax preparer "may provide those documents." ¶¶ 5 and 6. The debtor fails to acknowledge that he himself might readily have obtained copies from his and Road Hog's tax preparers. He does not state he has tried to do so and offers no explanation for this failure. The debtor's suggestion that MGE should go out and get them from his and Road Hog's tax preparers via subpoena reflects a serious misunderstanding of the fiduciary duty a debtor-in-possession owes his creditors.[3]

As to several of the categories of documents MGE is seeking, the debtor simply states he does not have any such documents, which seems unlikely. Thus, he claims he has no unsecured property tax bills or proof of payment (although he has a boat and trailer); he has no secured property tax bills or proof of payment (although he owns a one-third interest in the 2.22-acre parcel where MGE operates its business); and he has no record of fees or proof of payment to the DMV (although he owns three vehicles), although he "will be producing" his August 2017 DMV payment (he does not say for which vehicle).[4]

In response to MGE's request for production of all purchase agreements and proof of payment for any non-owned or partly owned real property acquired, held or possessed by the Debtor, his agent or assignee from 2013 to date, the debtor states, "Debtor has not owned or acquired any real property since 2013 with the exception of his family home that was sold in 2013." Opp., ¶ 8. He does not indicate he has produced or will produce the documents evidencing that sale, and in response to requests for bills of sale, purchase agreements, or proof of deposit or payment, or documents transferring ownership of any property from 2013 to present, the debtor simply states he has none. The sale of his family home in 2013 is apparently beyond what the debtor considers to be the reasonable scope of MGE's subpoena.

It is the debtor's primary argument that "through decades of working together and years of litigation the Creditors are uniquely familiar with Debtor's affairs" (Opp. at 4:11-13), and that "[t]he primary assets in this case are in the control of Creditors." Id. at 4:13. These are not the debtor's conclusions to draw, at least not in response to a legitimate subpoena for the production of documents by a chapter 11 debtor-in-possession. Rule 2004 is not by its terms or by any case law cited by the debtor or known to the court limited to creditors who are not related to or in business with the debtor, who have not been in protracted litigation with the debtor, and who in the debtor's opinion, should already know about his financial

affairs. The debtor here has clearly tailored his drawn-out responses and production of documents to his own conclusions about the business and litigation history between himself, on the one hand, and his siblings and their spouses, on the other. That was not his choice to make.

The court concludes that MGE has shown by clear and convincing evidence that by failing to timely produce all the requested documents, the debtor violated a specific and definite order of this court; namely, the Rule 2004 order and the subpoena by which it was implemented, of which he had actual notice. As such, he is in contempt of court. The court will order that the debtor will have until 5:00 p.m. on the fifth business day following electronic service of the order on this motion to produce all remaining documents to MGE, along with a declaration attesting to his lack of possession and inability to reasonably obtain any missing documents, with specifics as to what attempts he has made to obtain them. The court will continue the hearing on this motion to monitor the debtor's compliance, and if he has not complied, the court will impose a daily sanction until he has complied fully. Pursuant to Fed. R. Civ. P. 45(d)(2)(B), incorporated herein by Fed. R. Bankr. P. 9016, all objections to the subpoena have been waived. The court declines the debtor's request to delay an award of attorney's fees and will award reasonable fees and costs upon MGE's submission of its counsel's time records. A separate motion will not be required.

The court will hear the matter.

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1 MGE has not provided a transcript of the sessions or other admissible evidence as to the questions and answers; however, the debtor has not suggested in his opposition that the list is inaccurate.

2 The debtor testified on his Schedule G he has no executory contracts or unexpired leases.

3 In fact, at the meeting of creditors, the debtor testified he does not recall who prepared his tax returns and could not recall the name of his or Road Hog's bookkeeper. As to Road Hog, he refused to answer questions as to whether it had financed any vehicles or equipment, stating he did not have to answer those questions because Road Hog is not in bankruptcy – this despite the fact that, according to his Schedule A/B, the debtor is a 50% owner of Road Hog. He also would not disclose the address of the other 50% owner, one Aileen Batis, who is apparently the debtor's girlfriend.

4 There is a certain unappealing temerity in the debtor's response that "[r]egistration fees are not material expenses." Opp., ¶ 13.

14.	14-27267-D-7 HSM-28	SARAD/USHA CHAND	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK, AND MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEES ATTORNEY(S) 10-20-17 [431]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

15. 15-28170-D-7 KEVIN ARMSTEAD
ASW-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-16-17 [51]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

16. 17-24571-D-7 JASON YOUNG
CRG-1

MOTION TO COMPEL ABANDONMENT
10-12-17 [15]

17. 11-46172-D-12 VIRENDA/SUMAN MISHRA
17-2151 DWE-1
MISHRA ET AL V. WELLS FAGO BANK, N.A.

MOTION TO DISMISS ADVERSARY PROCEEDING
10-12-17 [12]

Final ruling:

This adversary proceeding was dismissed pursuant to stipulation of the parties by order dated November 9, 2017. Thus, this motion will be denied as moot by minute order. No appearance is necessary.

18. 15-25380-D-7 ELIZABETH MEZA
BHS-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH STATE OF CALIFORNIA AND/OR MOTION TO SELL
10-16-17 [38]

Tentative ruling:

This is the trustee's motion to approve a compromise with the State of California of a pending lawsuit commenced by the debtor against the State and its agency, the Department of General Services (the "State"). The debtor has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted.

The trustee proposes to compromise the litigation for $40,000 to be paid by the State to the bankruptcy estate in full and final resolution of the lawsuit. As appropriate under the case law of the Ninth Circuit Bankruptcy Appellate Panel,

which this court agrees with, the trustee has analyzed his transaction with the State as both a compromise and a sale to the State of the claims asserted in the lawsuit. As to the sale aspect of the transaction, the court will entertain overbidding, if any, at the hearing. As to the compromise aspect, the court concludes the compromise meets the fair and equitable standard that governs in the Ninth Circuit.

This is a case where the debtor failed to disclose her claims against the State, which she now asserts have a value of at least $250,000, on her bankruptcy schedules.[1] The trustee filed a no-asset report, the debtor received her discharge, and the case was closed. It is undisputed that the debtor's claims against the State arose pre-petition and that the debtor was well aware of the claims at the time she filed her bankruptcy petition.

The debtor's arguments are two-fold. First, she contends the claims are worth far more than the $40,000 the trustee would receive for them under the compromise; thus, in her view, the compromise is not fair and equitable, as required by In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court, however, has no hesitation in agreeing with the trustee's analysis of and conclusions regarding the factors the court is required to consider. As a preliminary matter, the debtor needs to understand that if she continued to pursue the claims herself, she would be subject to a defense of judicial estoppel for her failure to disclose the claims in her bankruptcy case. Based on the non-exclusive factors the court is to consider in ruling on a judicial estoppel defense, as set forth in Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782-83 (9th Cir. 2001) (citation omitted), and based on four relatively recent decisions of the district court for this district cited by the trustee, including one by the judge whose department the plaintiff's state court action is now pending in by way of removal, the court finds it highly likely the defense would prevail.

That is not to say the trustee would be subject to the defense if he pursued the action. In fact, from the moment the lawsuit was commenced by the debtor, post-closing of the bankruptcy case, the claims it purported to state were property of the bankruptcy estate (Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001)); they had remained so even after the case was closed because they were not scheduled by the debtor. Bankruptcy Code § 554(c) and (d). As such, the lawsuit was and has been subject to prosecution only by the trustee, not by the debtor, who had and has no standing to pursue it. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004). However, even though the trustee would apparently not be subject to the defense of judicial estoppel that would apply against the debtor, he is the party with standing to pursue the claims and the court therefore gives his opinion of their value greater weight than the debtor's opinion.[2]

The court has reviewed the debtor's counsel's declaration and the debtor's exhibits, including the reasonable cause determination letter, the right to sue letters, and deposition excerpts, as well as the trustee's evidence, including Mr. Lindstrom's declaration and exhibits consisting of the debtors' answers to interrogatories, excerpts of the depositions of the debtor and others, and an expert report prepared by a forensic psychiatrist who examined the debtor and excerpts of the deposition testimony of a psychologist the debtor stated in her answers to interrogatories she had seen in connection with the symptoms she alleges support her claim for emotional distress damages. (The expert report and psychologist's deposition testimony have been filed under seal pursuant to court order.) Based on all of the evidence, both the trustee's and the debtor's, the court concludes the proposed compromise amount, $40,000, is well within the range of reasonableness. Spirtos v. Ray (In re Spirtos), 2006 Bankr. LEXIS 4894 at *32 (9th Cir. BAP 2006), quoting In re Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

It is of note that the only parties who have objected to the compromise are the debtor and, arguably separately, her attorney, both of whom concealed the claims from the trustee and this court – the debtor when she filed her petition and thereafter and her attorney after Mr. Lindstrom alerted her to the existence of the bankruptcy case. The concerns of the debtor and her counsel clearly extend only to themselves and not to the creditors, whose interests the court is to consider as paramount. The court concludes, based on all the evidence presented, that the facts are heavily disputed, such that the likelihood the trustee would prevail in the litigation to an extent greater than $40,000 is not great. The expense, inconvenience, and delay associated with trying the case, although it appears most of the discovery has been completed, very likely outweigh the likelihood of success in excess of that amount.[3] Thus, the court concludes that the compromise "compares favorably with the expected rewards of litigation" (Greif & Co. v. Shapiro (In re Western Funding Inc.), 550 B.R. 841, 851 (9th Cir. BAP 2016)), and is fair and equitable.

The debtor's second argument is that her counsel in the district court action asserts an attorney's lien in an amount between $18,477, based on a contingency fee of one-third of the proposed compromise amount, $40,000, plus costs, and $87,777 based on a fee of one-third of counsel's valuation, $250,000, plus costs. The debtor's counsel contends the court may not order the sale of the claims under § 363 of the Code because she does not consent to the sale. She errs, however, in quoting only subdivisions (2) and (3) of § 363(f), omitting subdivision (4); namely, that the trustee may sell the claims free and clear of her interest if her interest is in bona fide dispute. The trustee disputes counsel's claim for fees and costs, noting she failed ever to seek this court's approval of her employment despite being aware of the bankruptcy case since at least March of 2016. The trustee testifies that on specified dates in January, February, March, April, June, August, and September of this year, he contacted the debtor's counsel asking that she file an application in this court for approval of her employment as the trustee's special counsel. She has not done so and any attempt to do so at this time would be require her to make a showing of exceptional circumstances that warrant nunc pro tunc approval, as required by In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988)). In these circumstances, such a showing would be problematic for her, at best.

In a related vein, the work the debtor's counsel has done has been in a case that was not her client's to prosecute – it belonged and belongs to the bankruptcy estate and is subject to administration only by the trustee, not by the debtor. The terms of counsel's fee agreement with her client, the debtor, do not apply to the trustee. For these reasons, the court concludes the interest of the debtor's counsel in the debtor's claims in the district court action is in bona fide dispute and the court will order the sale free and clear of her interest, with her lien rights, if any, to attach to the proceeds with the same validity and to the same extent as they existed in the claims before the sale.

Two final matters. The debtor urges the court, if it is inclined to approve the compromise, to limit the settlement as "not a full and final settlement" of the debtor's claims in the action, but only as a settlement with the debtor's creditors in the bankruptcy case. That settlement is not on the table and there has been no indication by the State that it would go along with such a proposal. The debtor also asks that the court order all the parties – the debtor, the State, and the trustee – to mediate the case and reach a global settlement. The debtor has cited no authority for the proposition that this court has the power to do any such thing.

For the reasons stated, the motion will be granted, the compromise will be approved, and overbidding will be permitted at the hearing on the sale of the trustee's claims against the State. The court will also grant the trustee's request

for a waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h) and will approve the sale with the lien rights of the debtor's counsel, if any, to attach to the proceeds. The court will hear the matter.

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1 The debtor failed to list the claims, of which she was well aware, on her Schedule B, and compounded her non-disclosure on her statement of financial affairs. Where required to list "all suits and administrative proceedings" to which she was or within the prior year had been a party, the debtor was careful to list lawsuits against her by collection agencies, lawsuits that had already resulted in judgments. She failed, however, to list an administrative proceeding she had commenced almost four years earlier by filing a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC had, by the debtor's own admission in her opposition to this motion, investigated her claims for the following three years, an investigation that was still ongoing within the year prior to the debtor's bankruptcy filing.

Indeed, the debtor's own exhibits reveal the EEOC issued a determination ten months before the debtor filed her bankruptcy petition, schedules, and statement of affairs that there was reasonable cause to believe she had been sexually harassed by a co-worker and had been transferred and disciplined in retaliation for making her complaint. She received a right to sue letter from the U.S. Departent of Justice, Civil Rights Division, seven weeks before she received her bankruptcy discharge and a right to sue letter from the State's Department of Fair Employment & Housing a month after she received her discharge and the bankruptcy case was closed, yet at no time did she inform the trustee of her claims. Instead, the day after the State's right to sue letter was issued, the debtor filed her state court complaint.

2 The debtor's attorney, on whose opinion the debtor apparently relies for her estimate of the value of the claims, has not done herself or her client any favors in her handling of this situation. The trustee has filed a declaration of the deputy attorney general, Ted Lindstrom, who has handled the case for the State and who discovered the debtor's bankruptcy case in his background research and alerted the trustee to the district court action. Mr. Lindstrom testifies the debtor's attorney did not want to disclose the existence of the bankruptcy case in the parties' joint status report filed in the district court action on March 10, 2016, four and a half months after the bankruptcy case was closed. Mr. Lindstrom testifies the debtor's counsel relented but instructed him to note in the status report the debtor's position that the bankruptcy "is not related to this action and has no bearing on this case." Rule 26(f) Joint Status Report, Trustee's Ex. G, at 4:16-17. And a year later, on March 3, 2017, when Mr. Lindstrom mentioned the debtor's bankruptcy filing during his deposition of the debtor, her attorney said to Mr. Lindstrom, "You went behind [the debtor's] back and opened up a previously closed bankruptcy case to gain leverage." Trustee's Ex. M, at 195:11-12.

3 The fourth factor the court is to consider, ease of collection if the trustee were to prevail, is neutral in this case, as the defendant is the State of California.

19. 16-23480-D-7 MARISSA MAULDIN — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEES ATTORNEY(S)
DNL-3
10-25-17 [35]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

20. 17-25985-D-7 DANIEL MARTINEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1
WELLS FARGO BANK, N.A. VS.
10-17-17 [12]

21. 17-20487-D-7 SCOTT/ANNA JOHNSON — MOTION TO REDEEM
PGM-2
10-13-17 [76]

Tentative ruling:

The debtors seek to redeem a tool box from the lien of Snap-On Credit, LLC (the "Snap-On"). Snap-On has filed opposition. For the following reasons, the motion will be denied.

The debtors wish to redeem a tool box at what they contend is its current value, $800.[1] The debtors claimed the tool box as exempt. Debtor Scott Johnson testifies he originally scheduled its value at $2,000, "based on guilt in having declared bankruptcy." Johnson Decl., DN 78, at 2:9-10. He now testifies extensively to the condition of the tool box and concludes if it were listed for $2,000 on Craigslist or Ebay, it would take months to sell and he would have to sell the tools in the tool box as well to get that price.

The primary problem for the debtors, as Snap-On points out, is that § 722 permits a debtor to redeem only personal property intended primarily for personal, family, or household use. Here, the record demonstrates the tool box was intended for and is used in the debtor's employment and not for personal, family, or household use. The debtors listed, on both original and amended Schedules A/B, the following:

work tools	**$1,000**
TOOLS; MECHANIC ELECTRICIAN	**$2,500**
TOOL BOX	**$2,000**

Debtors' Schedules A/B, DNs 12 and 68.

According to the debtors' Schedule I, Mr. Johnson works in maintenance for a company called Aryzta. He testifies "[t]he box is not stationary and [is] used throughout the plant." Johnson Decl., at 2:6. There is nothing in the debtors' Schedule J to suggest they need a tool box for which Mr. Johnson paid $3,570[2] for home maintenance purposes. In addition, Snap-On has filed an authenticated copy of the Retail Installment Agreement under which Mr. Johnson purchased the tool box, signed by Mr. Johnson; it states, in all capital letters, "Buyer represents and warrants that the property purchased under this agreement is to be used primarily for commercial or business purposes and not primarily for personal, family or household purposes." Lachell Decl., DN 92, Ex. 1, p. 6.

Although the debtor's credibility is in serious question here – he scheduled the tool box at $2,000 on both his original Schedule A/B filed February 7, 2017 and on an amended Schedule A/B filed October 3, 2017, seven days before he signed his declaration in support of this motion to value the item at $800 – the fact that the tool box was and is intended for commercial or business use, and not for personal, family, or household use, means the debtors may not redeem it from Snap-On's lien. Accordingly, the motion will be denied.

The court will hear the matter.

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1 Snap-On has filed a claim for $4,748 which it has demonstrated by authenticated copies of retail installment agreements signed by debtor Scott Johnson is secured by the tool box and other items.

2 Lachell Decl., DN 92, Ex. 1, p. 10.

22.	17-24589-D-7 SCB-2	EDWARD/VERENICE MCTHORN	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH EDWARD GLENN MCTHORN AND VERENICE MORENO MCTHORN 10-23-17 [34]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

23.	15-29890-D-7 DNL-33	GRAIL SEMICONDUCTOR	MOTION FOR COMPENSATION FOR GATMAYTAN, YAP, PATACSIL, GUTIERREZ & PROTACIO, SPECIAL COUNSEL(S) 10-25-17 [904]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

24. 17-25012-D-7 FF-1 MARINO/KAREN SINNUNG — MOTION TO SPLIT/SEVER CHAPTER 7 CASE
10-27-17 [23]

Tentative ruling:

This is the motion of joint debtor Karen Sinnung to sever her from this case and that she be allowed to file her own separate bankruptcy case. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will hear opposition, if any, at the hearing, assuming a corrected proof of service is on file prior to the time of the hearing.

The proof of service (1) is not signed under oath, as required by 28 U.S.C. § 1746; (2) does not state the manner of service; and (3) does not state the documents were served on any particular parties. Although there is a PACER matrix attached to the proof of service, the proof of service does not state the documents were served on the parties listed on that matrix. Instead, it states only, "On October 27, 2017, I served the following documents: [motion, etc]." Thus, it does not state how the documents were served or on whom. The hearing will proceed if a corrected proof of service has been filed by the time of the hearing.

25. 12-37314-D-7 GEL-6 MARK/ROXANNE WATSON — MOTION TO AVOID LIEN OF ONEMAIN FINANCIAL GROUP, LLC
11-6-17 [69]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien ostensibly held by OneMain Financial Group, LLC ("OneMain"), allegedly successor to American General Financial Services, Inc. ("American General"). The motion will be denied because there is no evidence OneMain is the holder of the lien and American General, which appears to be the holder of the lien, was not served. The debtors previously brought a motion to avoid the same lien, which they described as being held by American General. The abstract of judgment filed as an exhibit to that motion specifically named American General as the judgment creditor. That motion was denied for failure to serve American General in compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b).

This new motion states, "On or around 2015, Debtors are informed or believed ONEMAIN FINANCIAL GROUP, LLC acquired the accounts of AMERICAN GENERAL FINANCIAL SERVICES, INC." Debtors' Motion, DN 69, at 2:16-19. In support of that proposition, the debtors testify, "We are informed or believe ONEMAIN FINANCIAL GROUP, LLC acquired the accounts of AMERICAN GENERAL FINANCIAL SERVICES, INC. sometime in 2015." Debtors' Decl., DN 71, at 2:12-14. The debtors have failed to demonstrate they have personal knowledge of the alleged transfer of accounts, including in particular the judicial lien at issue here, from American General to OneMain, and have failed to submit any admissible evidence to support that allegation. As they have served only OneMain, and not American General, the motion will be denied for lack of proper service. (Service on OneMain was ineffective because, so far as the record reveals, there is no evidence of a judicial lien held by OneMain that is subject to avoidance under § 522(f).)

As a result of this service defect, the motion will be denied by minute order. Alternatively, the court will continue the hearing to allow debtor to address the evidentiary issue addressed above. No appearance is necessary.

26.	12-37314-D-7 GEL-7	MARK/ROXANNE WATSON	MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA INC. 11-6-17 [75]

27.	17-26527-D-7 SW-1 ALLY BANK VS.	JOHN/TINA HARRISON	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-7-17 [10]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the court finds that a hearing is not necessary as the trustee filed a statement of non-opposition and the debtors' Statement of Intentions indicates they intend to surrender the collateral. Accordingly, the court finds a hearing is not necessary and will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

28.	17-25546-D-7	TERESA BARCENAS	CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 8-22-17 [5]

29.	14-25148-D-11 GMW-4	HENRY TOSTA	CONTINUED MOTION TO INCUR DEBT 10-25-17 [735]

Final ruling:

An order granting this motion was entered on November 13, 2017. As such, the matter is removed from calendar. No appearance is necessary.

30. 11-46172-D-12 VIRENDA/SUMAN MISHRA
17-2156
MISHRA ET AL V. WELLS FARGO BANK, N.A.

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-17-17 [1]

31. 11-46172-D-12 VIRENDA/SUMAN MISHRA
17-2156 PGM-2
MISHRA ET AL V. WELLS FARGO BANK, N.A.

CONTINUED MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR MOTION FOR ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE PROHIBITING DEFENDANT FROM SELLING REAL PROPERTY PENDING TRIAL
9-12-17 [22]

32. 17-25985-D-7 DANIEL MARTINEZ
MRL-1

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
11-8-17 [18]

33. 16-25590-D-7 JOSE ANGULO
TGM-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BOUTIN JONES INC. FOR THOMAS G. MOUZES, TRUSTEES ATTORNEY(S)
10-31-17 [66]