

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtors' real property located at 3728 Rocky Shore Drive, Vallejo, California (the "Property") had a value of \$363,000.00 on the date of the filing of the motion. Except as so ordered, the motion is denied.

The foregoing valuation does not establish a value of the Property for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 506.03[d][10] (15th ed. Rev. 2009). In this case, a plan has yet to be confirmed.

The court will issue a minute order.

4. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-602

MOTION TO VALUE COLLATERAL OF
RHODES RANCH ASSOCIATION AND/OR
MOTION TO AVOID LIEN OF RHODES
RANCH ASSOCIATION
11-14-13 [[612](#)]

Tentative Ruling: The motion is granted in part. The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtors' real property located at 240 Wicked Wedge Way, Las Vegas, Nevada (the "Property") had a value of \$267,367.00 on the date of the filing of the motion. Except as so ordered, the motion is denied.

The foregoing valuation does not establish a value of the Property for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 506.03[d][10] (15th ed. Rev. 2009). In this case, a plan has yet to be confirmed.

The motion cites no authority for its request for lien avoidance, but to the extent, if any, that the motion seeks lien avoidance under 11 U.S.C. § 522(f), the motion cannot succeed. A motion to avoid a lien under § 522(f) is available only for the purpose of avoiding a "judicial lien" or a nonpossessory, non-purchase money security interest in certain types of personal property. As the debtors' exhibits indicate that the creditor's lien is based on a lien for delinquent assessments filed by the creditor, it does not appear that lien avoidance under § 522(f) is available to the debtors.

The court will issue a minute order.

5. [11-46060](#)-B-7 LAURA HIMES MOTION FOR RELIEF FROM JUDGMENT
[12-2046](#) LEH-2 10-22-13 [[66](#)]
ORTEGA ET AL V. HIMES

Tentative Ruling: The motion is dismissed without prejudice.

This motion is a contested matter under Federal Rule of Bankruptcy Procedure 9014. As such, it must be served on the party against whom the debtor seeks relief - in this case, the plaintiffs. The debtor has not filed a proof of service showing that the motion was served on any party in interest. There is no evidence in the court's docket that the motion was properly served. The court previously informed the debtor of the necessity of filing a proof of service in its ruling issued April 4, 2013, denying the debtor's prior motion for relief from judgment without prejudice (Dkt. 57).

The court will issue a minute order.

6. [11-47149](#)-B-7 J.H. THIEL, LLC MOTION FOR COMPENSATION BY THE
HSM-12 LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR HOWARD S.
NEVINS, TRUSTEE'S ATTORNEY(S),
FEES: \$80,243.25, EXPENSES:
\$1,182.21
11-19-13 [[123](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$80,243.25 in fees and \$1182.21 in costs, for a total of \$81,425.46, for the period January 8, 2012, through December 17, 2013, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on February 7, 2012 (Dkt. 29), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case, with an effective date of employment of January 8, 2012. The applicant now seeks compensation for services rendered and costs incurred during the period January 8, 2012, through and including December 17, 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.

7. [11-47149](#)-B-7 J.H. THIEL, LLC MOTION FOR COMPENSATION FOR
HSM-13 GONZALES AND SISTO, LLP,
ACCOUNTANT(S), FEES: \$2,679.00,
EXPENSES: \$0.00
11-19-13 [[128](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$2679.00 in fees and \$0.00 in costs, for a total of \$2679.00, for the period February 17, 2012, to October 31, 2013, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on March 7, 2012 (Dkt. 37), the court authorized the chapter 7 trustee to retain the applicant as accountants for the chapter 7 trustee in this case, with an effective date of employment of January 23 2012. The applicant now seeks compensation for services rendered and costs incurred during the period January 17, 2012, through and including October 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.

8. [11-46760](#)-B-7 BRIAN/RANDI THIEL MOTION BY BRET R. ROSSI TO
[12-2018](#) BRR-1 WITHDRAW AS ATTORNEY O.S.T.
FARM CREDIT WEST, PCA V. THIEL 11-25-13 [[129](#)]
ET AL

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

The motion is granted in part. The movant, Bret Rossi, Esq., is permitted to withdraw as counsel for defendant debtors Brian Thiel and Randi Thiel ("Defendants"), in this adversary proceeding. The movant shall forward to the Defendants any documents or correspondence that are related to this adversary proceeding and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Defendants have recently adopted positions with respect to this adversary proceeding in conflict to one another which, if movant were to continue representation would result in a violation of California Rule of Professional Conduct 3-310(c)(2). The movant is required to withdraw from representation of the defendants by Rule of Professional Conduct 3-700(B)(1).

The court will issue a minute order.

9. [11-46760](#)-B-7 BRIAN/RANDI THIEL MOTION BY BRET R. ROSSI TO
[12-2073](#) BRR-3 WITHDRAW AS ATTORNEY O.S.T.
TIBBETTS ET AL V. THIEL ET AL 11-25-13 [[75](#)]

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

The motion is granted in part. The movant, Bret Rossi, Esq., is permitted to withdraw as counsel for defendant debtors Brian Thiel and Randi Thiel ("Defendants"), in this adversary proceeding. The movant shall forward to the Defendants any documents or correspondence that are related to this adversary proceeding and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Defendants have recently adopted positions with respect to this adversary proceeding in conflict to one another which, if movant were to continue representation would result in a violation of California Rule of Professional Conduct 3-310(c)(2). The movant is required to withdraw from representation of the defendants by Rule of Professional Conduct 3-700(B)(1).

The court will issue a minute order.

10. [11-46760](#)-B-7 BRIAN/RANDI THIEL MOTION BY BRET R. ROSSI TO
[12-2284](#) BRR-1 WITHDRAW AS ATTORNEY O.S.T.
DIDRIKSEN V. THIEL ET AL 11-25-13 [[70](#)]

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

The motion is granted in part. The movant, Bret Rossi, Esq., is permitted to withdraw as counsel for defendant debtors Brian Thiel and Randi Thiel ("Defendants"), in this adversary proceeding. The movant shall forward to the Defendants any documents or correspondence that are related to this adversary proceeding and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Defendants have recently adopted positions with respect to this adversary proceeding in conflict to one another which, if movant were to continue representation would result in a violation of California Rule of Professional Conduct 3-310(c)(2). The movant is required to withdraw from representation of the defendants by Rule of Professional Conduct 3-700(B)(1).

The court will issue a minute order.

11. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-103 MOTION TO APPROVE DISTRIBUTION AMOUNTS TO SECTION 503(B) (9) CLAIMANTS AND/OR MOTION TO APPROVE PAYMENT OUTSIDE THE ORDINARY COURSE OF BUSINESS 11-19-13 [[2335](#)]

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

The motion is granted. The debtor is authorized to do the following:

1.) Distribute the proceeds of the Note (as that term is defined in the motion) to the holders of allowed Section 503(b)(9) Claims (as that term is defined in the motion) in the manner set forth in the motion and the amendment to the motion (the "Motion Amendment") filed on December 10, 2013.

2.) Distribute \$400,000.00 to Western Milling, LLC, in satisfaction of Western Milling LLC's settled secured claim in the manner described in the Motion Amendment.

Except as so ordered, the motion is denied.

Counsel for the debtor shall submit a proposed form of order that conforms to the foregoing ruling.

12. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC FWP-104 MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FIRST AMERICAN TITLE COMPANY 12-3-13 [[2368](#)]

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. 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.

13. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC LDH-1 MOTION TO DISMISS ADVERSARY PROCEEDING 10-9-13 [[15](#)]
[13-2256](#) ZF IN LIQUIDATION, LLC V. IDAHO AVENUE LAND COMPANY ET

Tentative Ruling: This matter will not be called for hearing before 11:00 a.m. The court issues no tentative ruling.

17. [13-33107](#)-B-7 BUTTE STEEL & MOTION TO SELL
BLL-2 FABRICATION, INC. 11-12-13 [[17](#)]

Tentative Ruling: The motion is dismissed without prejudice.

This motion to sell personal property of the estate must be served on all creditors pursuant to Fed. R. Bankr. P. 2002(a)(2). The chapter 7 trustee's certificate of service (Dkt. 25) references an "attached list of Creditors," but no such list is attached to the certificate of service. There is therefore no evidence on the court's docket that the motion was properly served.

The court will issue a minute order.

18. [13-33107](#)-B-7 BUTTE STEEL & MOTION TO COMPEL ABANDONMENT
RJW-2 FABRICATION, INC. 11-26-13 [[39](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion and its supporting papers were not served on all creditors as required by FRBP 6007(a). While the motion is technically brought under FRBP 6007(b), creditors are entitled to the same notice that they would receive if the motion were brought by the trustee. First Carolina Fin. Corp. v. Trustee of Estate of Caron (In re Caron), 50 B.R. 27 (Bankr. N.D. Ga. 1984); In re Wideman, 84 B.R. 97 (Bankr. W.D. Tex. 1988).

The court will issue a minute order.

19. [12-38108](#)-B-11 KURT HUFFINE MOTION FOR FINAL DECREE AND
CAH-10 ORDER CLOSING CASE
11-19-13 [[163](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 3022, the clerk of the court shall enter a final decree in this case on form EDC-7-170 (Rev. 9/1/10). Upon entry of the final decree, the clerk of the court shall close the case.

The court finds, based on the undisputed declaration of the debtor-in-possession in support of the motion, that the debtor's estate has been fully administered pursuant to the terms of the confirmed chapter 11 plan.

The court will issue a minute order granting the motion.

20. [12-38108](#)-B-11 KURT HUFFINE
CAH-10

MOTION FOR COMPENSATION FOR C.
ANTHONY HUGHES, DEBTOR'S
ATTORNEY(S), FEES: \$14,385.00,
EXPENSES: \$131.85
11-12-13 [[153](#)]

Tentative Ruling: The motion is granted in part. 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 applicant, counsel to the debtor, in the amount of \$13,890.00 in fees and \$131.85 in costs, for a total of \$14,021.85, for services rendered during the period October 20, 2012, through and including October 12, 2013. The allowed fees and costs shall be paid as an administrative expense pursuant to the terms of the chapter 11 plan confirmed by order entered June 26, 2013. Except as so ordered, the motion is denied.

On October 11, 2012, the debtor commenced the bankruptcy case by filing a voluntary petition under Chapter 11. By order entered December 5, 2012 (Dkt. 57), the court granted the debtor's request to employ the applicant as general bankruptcy counsel. The applicant now seeks approval of fees and costs for the period October 11, 2012, through and including October 12, 2013, in the total amount of \$14,516.85 in fees and costs.

The court disallows \$495.00 in fees for services rendered prior to October 20, 2012. The order approving the applicant's employment does not specify an effective date of employment, and therefore the effective date of applicant's employment is the date of the entry of the order, December 5, 2012. 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 construes the motion as requesting an effective date of employment of October 11, 2012, the date of the filing of the petition. The court grants that request in part and grants the applicant an effective date of employment of October 20, 2012, 30 days before the date of the filing of the applicant's employment application on November 19, 2012. The court does not grant an effective date of employment earlier than October 20, 2012, as the applicant has shown no evidence of extraordinary or exceptional circumstances justifying an earlier date. This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). Therefore, the court disallows the applicant's request for approval of compensation for services rendered prior to October 20, 2012.

The court finds, in the absence of an objection from any party in interest, that the approved fees and costs are reasonable compensation for actual and necessary services. The court expresses no opinion as to whether the compensation for the services of applicant's paralegal and

23. [13-31424](#)-B-7 CLARENCE WHITE
BRR-1

MOTION TO AVOID LIEN OF STUART
WILLIAMS AND/OR MOTION TO AVOID
LIEN OF PATRICIA JOHNSON
MARTINEZ
10-31-13 [[12](#)]

Tentative Ruling: The opposition filed by Patricia Alice Johnson Martinez, Jennifer Brooke Johnson and Joseph Christopher Johnson (in which judicial lien creditors Stuart Williams has also allegedly joined) is overruled. 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 Stuart Williams, recorded in the official records of Yolo County, Document No. 2010-0031586-00, is avoided as against the real property located at 27263 E. El Macero Drive, El Macero, California (the "El Macero Property") and the real property located at 3111 Newport Terrace, Davis, California (the "Davis Property," and collectively with the El Macero Property, the "Properties"). The judicial lien in favor of Patricia Alice Johnson Martinez, recorded in the official records of Yolo County, Document No. 2010-0019080-00 is avoided as against the Properties.

The El Macero Property has a value of \$1,250,000.00 as of the date of the petition, based on the debtor's sworn Schedule A, as referenced in his supporting declaration. The unavoidable liens total approximately \$6,057,000.00. The debtor claimed the El Macero Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$100.00. Williams and Johnson each hold a judicial lien created by the recordation of an abstract of judgment in the chain of title of the El Macero 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 liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and its fixing is avoided.

The Davis Property has a value of \$245,000.00 as of the date of the petition, based on the debtor's sworn Schedule A, as referenced in his supporting declaration. The unavoidable liens total approximately \$5,250,000.00. The debtor claimed the Davis Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$100.00. Williams and Johnson each hold a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Davis 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 liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and their fixing is avoided.

The opposition argues that the amount of the unavoidable liens encumbering the Properties, specifically the amount of a lien in favor of All Cal Mortgage ("All Cal"), is "overstated" because the motion does not take into account the fact the debtor's obligation to All Cal is also secured by other real properties which are not property of the estate. To the extent the opposition argues that the court must take the value of non-estate properties into account when performing the calculation required by 11 U.S.C. § 522(f), the court disagrees. The opposition essentially asks the court to conduct a hypothetical marshaling analysis

with respect to All Cal's liens, but that reads too much into the requirements of 11 U.S.C. § 522(f)(2).

We will not, however, adjust the mathematical formula of section 522(f)(2) as a matter of equity to provide for hypothetical events. That section "should be interpreted according to its plain meaning." [Bank of America Nat'l Trust and Sav. Assn. v. Hanger (In re Hanger), 217 B.R. 592, 597-98 (9th Cir. BAP 1997), aff'd, 196 F.3d 1292 (9th Cir.1999)], citing United States v. Turkette, 452 U.S. 576, 580, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981); see also United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989) (the "880 "plain meaning of legislation should be conclusive"). Section 522(f)(2)(A)(ii) specifically requires a court to consider "all other liens on [a debtor's] property" when calculating whether a lien impairs an exemption; it does not provide a mechanism for excluding non-avoided recorded liens from the calculation, nor does it permit adjustments based on liens that also encumber property belonging to others. We are bound to follow the statutory calculation. Hanger, 217 B.R. at 597-98.

In re Darosa, 318 B.R. 871, 879-80 (9th Cir. BAP 2004) (footnote omitted). See also In re Morinia, 2009 WL 3261691 at * 1 (Bankr. D.N.M. Oct. 8, 2009):

This simple mathematical formula is to be applied literally. In re Bowshier, 389 B.R. 542, 546 (Bankr.S.D.Ohio 2008). See also Kolich v. Antioch Laurel Veterinary Hospital (In re Kolich), 328 F.3d 406, 410 (8th Cir.2003) ("[O] ur task is simply to apply § 522(f)(2)(A) as Congress wrote it."); Trahan v. Day Kimball Hospital (In re Trahan), 337 B.R. 448, 451 (Bankr.D.Ct.2006) (literal application is appropriate). A Court should not adjust the lien avoidance formula as a matter of equity to provide for hypothetical events. Milgard Tempering, Inc. v. Darosa (In re Darosa), 318 B.R. 871, 879 (9th Cir.BAP2004). Nor should a bankruptcy court order marshaling of assets at the request of a judicial lien holder in order to preserve a lien. In re Pray, 242 B.R. 205, 211 (Bankr.D.Mass.1999) ("Equity does not allow this Court to alter application of the statutory formula to preserve a judicial lien and impair the debtor's exemption simply by issuing a marshaling order based on a hypothetical, future sale of assets.") See also [In re Bowshier, 389 B.R. 542, 548-49 (Bankr. S.D.Ohio, 2008)] (Court recognizes "unfairness" of refusing to marshal assets, but found that "it is inappropriate to resort to equity in the face of clear statutory language.")

Based on the foregoing, the court declines to engage in the analysis of § 522(f)(2) in the manner requested by the opposition.

The opposition also disputes the debtor's valuation of the Properties as "understated in today's market," based on the "belief" of the creditors. However, the opposition presents no evidence which supports the creditors' belief as to value. The debtor's opinion of the value of the Properties, rendered in his capacity as the owner of the Properties and set forth in his sworn schedules are admissible evidence of the value of the Properties.

The court will issue a minute order.

24. [11-30525](#)-B-7 LINDA BACA MOTION TO ABANDON
SLF-4 11-19-13 [[115](#)]

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

The motion is granted. Pursuant to 11 U.S.C. § 554(a), the real property located at 7824 English Hills Road, Vacaville, California, (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that the Real Property had a value of \$507,000.00 on the date of the filing of the petition, and that the Property is encumbered by secured debt with an aggregate balance in excess of \$790,000.00. The Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(a).

The court will issue a minute order.

25. [12-26025](#)-B-7 TIMOTHY RASELY MOTION TO AVOID LIEN OF WELLS
CLH-1 FARGO BANK, N.A.
12-3-13 [[31](#)]

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.

26. [10-37129](#)-B-11 CAPITOL PROPERTIES, LLC MOTION FOR COMPENSATION FOR W.
WGS-6 STEVEN SHUMWAY, DEBTOR'S
ATTORNEY(S), FEES: \$135,275.00,
EXPENSES: \$0.00
10-24-13 [[581](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is incomplete. The contemporaneous time records purported by the motion to be filed as Exhibit "A" to the motion (Dkt. 584) were not filed with the motion. As a result, the court cannot evaluate whether the fees constitute reasonable compensation for actual, necessary services pursuant to 11 U.S.C. § 330(a).

The court will issue a minute order

27. [09-34235](#)-B-7 SIERRA WEST BUSINESS MOTION TO COMPROMISE
WT-2 PARK, LLC CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH AMADOR RIDGE,
LLC, CIRO L. TOMA, SIERRA
PACIFIC INDUSTRIES, INC.
11-18-13 [[312](#)]

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

The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the Settlement Agreement and Mutual Release of Claims (the "Agreement") filed as Exhibit "A" to the motion (Dkt 326 at 3). Except as so ordered, the motion is denied.

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

The chapter 7 trustee alleges without dispute that the compromise, which settles long-running and complex state court litigation between the debtor and several other parties, is fair and equitable. The court finds that the compromise is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed compromise is fair and equitable, and the motion is granted.

The court will issue a minute order.

28. [09-34235](#)-B-7 SIERRA WEST BUSINESS MOTION FOR COMPENSATION BY THE
WT-3 PARK, LLC LAW OFFICE OF WEINTRAUB TOBIN
CHEDIAK COLEMAN GRODIN FOR
JULIE E. OELSNER, TRUSTEE'S
ATTORNEY(S), FEES: \$66,073.00,
EXPENSES: \$1,659.98
11-18-13 [[320](#)]

Tentative Ruling: The application is granted in part. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves on an interim basis compensation for the applicant, counsel to the chapter 7 trustee, the amount of three \$37,377.50 in fees and \$1469.70 in costs, for a total of \$28,885.78, for services rendered during the period May 2, 2013, through and including November 18, 2013. The allowed fees and costs shall be paid as a chapter 7 administrative expense. Except as so ordered, the motion is denied, without prejudice to the applicant filing a motion for an amended employment order which states an effective date of employment

earlier than May 2, 2013, and to a further request for approval of fees and costs based on said earlier effective date, if approved.

On July 9, 2009, the debtor filed a voluntary chapter 7 petition. By order entered May 1, 2013 (Dkt. 311) (the "Employment Order"), which Employment Order was submitted to the court for signature by the applicant itself, the court approved the trustee's application to employ the applicant as counsel for the estate, with an effective date of employment of May 2, 2013. The applicant now seeks approval of fees and costs incurred during the period January 7, 2013, through and including November 18, 2013.

The court disallows \$28,695.50 in and \$190.28 in costs related to services rendered and costs incurred prior to the effective date of employment specified in the Employment Order. 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). The application discloses no reason why the court should approve fees and costs earlier than the effective date of employment; indeed, the application does not acknowledge the effective date of employment in the Employment Order at all.

The court will issue a minute order.

29. [13-31535](#)-B-7 NATHANAEL/CHRISTAL AGUILA MOTION TO BIFURCATE DEBTORS'
SJS-1 CHAPTER 7 BANKRUPTCY PETITION
AND/OR MOTION TO DISMISS CASE
11-13-13 [[16](#)]

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 seeks bifurcation of the jointly administered bankruptcy case, followed by dismissal of joint debtor Christal Kathleen Aguila's chapter 7 bankruptcy case. Due to the request for dismissal pursuant to 11 U.S.C. § 707(a), the motion must be served on the chapter 7 trustee and all creditors. Fed. R. Bankr. P. 2002(a)(4). The motion was not filed with a certificate of service showing that the aforementioned parties were served with the motion.

The court will issue a minute order.

30. [12-36237](#)-B-7 DARRYL/CLIFTINA HOWARD MOTION TO REDEEM
EJS-3 11-4-13 [[58](#)]

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. § 722, the debtors are authorized to redeem their 1997 Ford Explorer (the "Collateral") from

Citifinancial Services, Inc. for \$1314.00. Payment of the redemption amount shall be received by creditor on or before January 16, 2014. Except as so ordered, the motion is denied.

The court finds that the Collateral qualifies as personal property used for personal, family or household use. The debtors claimed the Collateral as fully exempt on amended Schedule C filed November 4, 2013 (Dkt. 62 at 8).

The court will issue a minute order.

31. [13-34589](#)-B-7 MIGUEL/VANESSA SOLIS MOTION TO EXTEND AUTOMATIC STAY
MG-1 11-27-13 [[9](#)]

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.

32. [13-34499](#)-B-7 JEAN BOEHM MOTION TO COMPEL ABANDONMENT
TPH-1 11-13-13 [[5](#)]

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

This matter is continued to January 14, 2014 at 9:32 a.m. Opposition is due by December 31, 2013. Replies, if any, are due by January 7, 2014.

For counsel's future reference, Local Bankruptcy Rule 9014-1(j) states that "continuances of hearings must be approved by the Court. A request for a continuance must be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties-in-interest oppose or support the request for a continuance." LBR 9014-1(j). Simply filing an amended notice of hearing (Dkt. 16) purporting to continue the matter is ineffective. A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g). However, in this instance the court treats the amended notice of hearing as a request for a continuance and grants that request. Therefore, this matter is continued to January 14, 2014 at 9:32 a.m.

The court will issue a minute order.

33. [13-30439](#)-B-7 ALMA JAMES MOTION TO EMPLOY DENNIS
SLF-2 HANIFORD'S CASCADE REALTY AS
REALTOR(S)
12-3-13 [[19](#)]

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.

34. [08-31840](#)-B-7 CLINTON MYERS MOTION FOR COMPENSATION FOR
MLG-109 HANK SPACONE, CHAPTER 7
TRUSTEE(S), FEES: \$467,601.00,
EXPENSES: \$8,893.00
11-19-13 [[1111](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 326(a), 11 U.S.C. § 330(a)(7), and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$467,601.00 in fees and \$8,893.00 in expenses, for a total of \$476,494.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On August 22, 2008, the debtor filed a chapter 7 petition. On August 25, 2008, the applicant was appointed as interim chapter 7 trustee in this case (Dkt. 2). The applicant now seeks compensation for services rendered and costs incurred during the period of August 25, 2008 through the closing of the case. The applicant has shown that there is a reasonable relationship between the work actually done and the amounts requested. 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.

35. [08-31840](#)-B-7 CLINTON MYERS MOTION FOR COMPENSATION BY THE
MLG-110 LAW OFFICE OF MCNUTT LAW GROUP,
LLP FOR SCOTT H. MCNUTT,
TRUSTEE'S ATTORNEY(S), FEES:
\$97,080.00, EXPENSES: \$540.11
11-19-13 [[1117](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a twelfth and final basis in the amount of \$97,080.00 in fees and \$540.11 in expenses, for a total of \$97,620.11, payable as a chapter 7 administrative expense, for the period of October 1, 2012, through November 19, 2013. The court further approves on a final basis a total of \$967,739.11, payable as a chapter 7 administrative expense, for the period of August 29, 2008, through September 30, 2012, all of which has been previously approved by the court on an interim basis. Total fees and costs approved on a final basis is therefore \$1,065,359.22. Except as so ordered, the motion is denied.

By order entered September 17, 2008 (Dkt. 58), the court authorized the chapter 7 trustee to retain McNutt Law Group, LLP (the "Applicant") as general bankruptcy counsel for the trustee. Although the Applicant's application for employment did not request an effective date of employment, the court by order entered March 31, 2009 (Dkt. 215) assigned an effective date of employment of August 29, 2008. The Applicant now seeks compensation for services rendered and costs incurred during the period of October 1, 2012, through and including November 19, 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.

36. [08-31840](#)-B-7 CLINTON MYERS MOTION FOR COMPENSATION FOR
MLG-111 CROZ, INC., REALTOR(S), FEES:
\$5,160.00, EXPENSES: \$0.00
11-19-13 [[1122](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a seventh and final basis in the amount of \$5,160.00 in fees and \$0.00 in expenses, for a total of \$5,160.00, payable as a chapter 7 administrative expense, for the period of April 1, 2012, through October 31, 2013. The court further approves on a final basis a total of \$129,114.62, payable as a chapter 7 administrative expense, for the period of February 1, 2010, through March 31, 2012, all of which has been previously approved by the court on an interim basis. Total fees and costs approved on a final basis is therefore \$134,274.62. Except as so ordered, the motion is denied.

By order entered February 19, 2010 (Dkt. 367), the court authorized the chapter 7 trustee to retain CROZ, Inc. (the "Applicant") as real estate consultant for the trustee. Although the Applicant's application for employment did not request an effective date of employment, the court by civil minute order entered June 11, 2010 (Dkt. 437) assigned an effective date of employment of February 1, 2010. The Applicant now seeks compensation for services rendered and costs incurred during the period of April 1, 2012, through and including October 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.

37. [08-31840](#)-B-7 CLINTON MYERS MOTION FOR COMPENSATION FOR
MLG-112 GONZALES AND SISTO, LLP,
ACCOUNTANT(S), FEES:
\$24,087.58, EXPENSES: \$0.00
11-19-13 [[1127](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a third and final basis in the amount of \$24,087.58 in fees and \$0.00 in expenses, for a total of \$24,087.58, payable as a chapter 7 administrative expense, for the period of June 1, 2012, through November 19, 2013. The court further approves on a final basis a total of \$22,880.50, payable as a chapter 7 administrative expense, for the period of September 1, 2008, through May 31, 2012, all of which has been previously approved by the court on an interim basis. Total fees and costs approved on a final basis is therefore \$46,968.08. Except as so ordered, the motion is denied.

By order entered September 26, 2008 (Dkt. 63), the court authorized the chapter 7 trustee to retain Gonzales and Sisto, LLP (the "Applicant") as accountant for the trustee. Although the Applicant's application for employment did not request an effective date of employment, the court by civil minute order entered September 17, 2010 (Dkt. 478) assigned an effective date of employment of September 1, 2008. The Applicant now seeks compensation for services rendered and costs incurred during the period of June 1, 2012, through and including November 19, 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.

38. [08-31840](#)-B-7 CLINTON MYERS MOTION FOR COMPENSATION FOR
MLG-113 PRUDENTIAL UTAH REAL ESTATE,
BROKER(S), FEES: \$18,800.00,
EXPENSES: \$0.00
11-19-13 [[1132](#)]

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

The motion is granted in part. The trustee is authorized pursuant to 11 U.S.C. § 330(a) and Fed. R. Bankr. P. 2016 to pay his real estate broker, Prudential Utah Real Estate ("Prudential"), through escrow, a commission totaling \$18,800.00 for actual, necessary services performed and actual, necessary expenses incurred in selling the real property and related interests located at Parcel 22, Sun Peak Master Plat, Summit County, Utah (the "Sale"). The commission shall be paid from the gross proceeds of the Sale and is awarded on a final basis. The net proceeds of the Sale shall be administered for the benefit of the estate. Except as so ordered, the motion is denied.

By order entered November 3, 2010 (Dkt. 494), the court authorized the chapter 7 trustee to retain Prudential as real estate broker for the trustee *nunc pro tunc* to August 27, 2010. The trustee now seeks compensation for services rendered and costs incurred by Prudential during the Sale. As set forth in the application, the approved commission is reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

39. [08-31840](#)-B-7 CLINTON MYERS
MLG-114

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH FRANCHISE TAX
BOARD
11-19-13 [[1137](#)]

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

The motion is granted, and the trustee is authorized to enter into and perform in accordance with the Agreement Regarding C.C. Myers Bankruptcy Estate 2010 Tax Liability (the "Agreement") attached as Exhibit "A" to the motion (Dkt. 1140). Except as so ordered, the motion is denied.

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

The trustee alleges without dispute that the Agreement is fair and equitable. The trustee believes that the estate's defenses to certain tax liabilities owed to the Franchise Tax Board ("FTB") for 2010 are both factual and subjective, which may result in complicated, protracted, costly litigation with an uncertain result. Additionally, he asserts that the Agreement is in the best interests of the estate and its creditors because it settles the tax dispute with the FTB for approximately forty-six percent (46.00%) of what the FTB claims it is owed and allows the trustee to move forward with closing this chapter 7 case. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the proposed Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

40. [13-20440](#)-B-7 JOHN/GAIL SIMS
JRR-1

MOTION TO SELL
11-18-13 [[31](#)]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. The trustee seeks court approval to short sell real property located at 40775 Leeward Road, The Sea Ranch, CA 95497 (the "Property") to Stephen and Fatima Nordquist for \$485,000.00 in cash with a \$9,700.00 buyer's premium to be paid by the purchasers. In this case, Wells Fargo Home Mortgage ("WFHM") holds a first deed of trust on the Property in the

amount of \$730,000.00. The trustee has not provided proof that this lienholder consents to the proposed short sale.

The absence of an actual compromise or sale for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual compromise or sale agreement to which the lienholders agree, no case or controversy within the meaning of Article III exists.

The court acknowledges that the trustee has filed an approval letter from WFHM (Dkt. 34, p.35). However, according to this letter, WFHM's approval of the short sale is contingent upon the closing occurring on or before December 15, 2013. The trustee acknowledges this fact in his motion (Dkt. 31, p.2, para.5). It is now December 17, 2013. There is no evidence before this court that a sale closed prior to the December 15 deadline, or that WFHM has consented to an extension of the deadline. As such, the trustee has failed to provide proof that WFHM has consented to the proposed short sale, and there is not an actual short sale for the court to approve.

The court will issue a minute order.

41. [13-26640](#)-B-7 DONNA/HARVEY BILLS MOTION TO SELL O.S.T.
HSM-5 12-3-13 [[78](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

42. [12-20174](#)-B-13 DEBRA LAWSON MOTION FOR SUMMARY JUDGMENT
[13-2111](#) PGM-1 10-28-13 [[38](#)]
LAWSON V. LAW OFFICE OF
GOLDSMITH & HULL

Tentative Ruling: This matter is continued to March 25, 2014 at 9:32 a.m.

43. [13-31040](#)-B-11 JIMMY ALEXANDER MOTION TO EMPLOY DAVID S.
DSS-6 SILBER AS ATTORNEY(S)
11-22-13 [[86](#)]

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.

44. [13-29642](#)-B-7 RUSSELL/JILL TOWNE CONTINUED MOTION TO COMPEL
DL-1 ABANDONMENT
8-15-13 [[14](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the debtors' sole proprietorship and fifty percent (50%) general partnership interest (collectively, the "Business"), and the assets associated with the Business, listed on Schedule B (Dkt. 11, p.2) and more fully described in the motion (the "Business Assets"), are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors alleges without dispute that the Business and Business Assets, after accounting for all encumbrances and claimed exemptions, have no equity available for distribution to creditors. The debtors have shown that the Business and Business Assets are of inconsequential value and benefit to the estate. The chapter 7 trustee has filed a supplemental declaration in support of the motion (Dkt. 51).

The court will issue a minute order.

45. [13-34046](#)-B-7 JASON/SHANNON WONG MOTION TO COMPEL ABANDONMENT
RAC-1 11-18-13 [[9](#)]

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

This matter is continued to January 28, 2014 at 9:32 a.m., pursuant to stipulation of the parties (Dkt.22), which was approved by court order signed December 12, 2013 (Dkt. 27).

46. [13-30749](#)-B-7 ROBERT/RENE GRECARD MOTION TO AVOID LIEN OF MEMBERS
MOH-1 1ST CREDIT UNION
11-12-13 [[14](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Members 1st Credit Union, recorded in the official records of Tehama County, Doc. No. 2009015102, is avoided as against the real property located at 7830 Woodland Avenue, Gerber, CA 96035.

The subject real property has a value of \$143,166.00 as of the date of the petition. The unavoidable liens total approximately \$185,520.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1) under which they exempted \$1,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

47. [11-41052](#)-B-7 ROOF TOP METAL PRODUCTS, MOTION FOR COMPENSATION BY THE
SLF-5 INC. LAW OFFICE OF THE SUNTAG LAW
FIRM FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S), FEES:
\$13,927.50, EXPENSES: \$1,165.70
11-19-13 [[198](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$14,000.00 in fees and expenses, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period of May 11, 2012 through and including December 17, 2013. By order entered on July 9, 2012 (Dkt. 178), the court authorized the trustee to retain the applicant as counsel in this case. The applicant's employment was effective May 11, 2012. The fees and costs requested are approved in full. The court notes that it would ordinarily reduce the applicant's fees because it has charged for an unnecessary CourtCall appearance on this matter. This matter is being disposed of without oral

argument and will therefore not be called at the hearing on December 17, 2013. No telephonic court appearance is required. However, because the applicant has already agreed to a fee reduction in this case, the requested fees are approved in full. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

48. [12-33558](#)-B-7 DENNIS/BARBARA GYLES CONTINUED MOTION TO SELL,
MPD-2 MOTION TO PAY AND MOTION TO
APPROVE PAYMENT OF A BUYER'S
PREMIUM TO THE BANKRUPTCY
ESTATE
10-15-13 [[26](#)]

Tentative Ruling: The motion is granted in part. The trustee is authorized to short sell real property located at 8972 Sierra Street, Elk Grove, CA 95624 (the "Property") to Huong Phan and Sopheap Nhieu for \$92,000.00 cash on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions submitted as Exhibit "A" (Dkt. 29, p.8) to the motion, provided that the court's ruling does not authorize sale of the Property to any other purchaser, does not authorize sale of the Property free and clear of liens and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. The trustee is also authorized to collect a buyer's premium of \$15,000.00 from the purchasers for the purposes set forth in the motion. The trustee is further authorized pursuant to 11 U.S.C. § 330(a) to pay the listing agent, San Diego REO Specialists, through escrow, a commission totaling \$3,220.00 of the gross proceeds of the sale for actual, necessary services performed and actual, necessary expenses incurred. The trustee is authorized to disburse an award of \$2,300.00 to the selling agent, Keller Williams Realty, on the terms set forth in the motion. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

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

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

The court will issue a minute order.

49. [13-32563](#)-B-7 HECTOR CARRILLO AND MARIA CONTINUED MOTION TO ABANDON
LRR-1 PARRA 10-9-13 [[12](#)]

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.

50. [12-40365](#)-B-11 SARAH GARLICK
JHH-16

MOTION FOR COMPENSATION FOR
JUDSON H. HENRY, DEBTOR'S
ATTORNEY(S), FEES: \$5,000.00,
EXPENSES: \$0.00
11-26-13 [[217](#)]

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.

51. [12-23670](#)-B-7 MIGUEL/AMELIA RODRIGUEZ
ASF-2

MOTION FOR COMPENSATION FOR
GABRIELSON AND COMPANY,
ACCOUNTANT(S), FEES: \$2,242.50,
EXPENSES: \$129.24
11-6-13 [[69](#)]

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 \$2,242.50 in fees and \$129.24 in expenses, for a total of 2,371.74, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period of September 10, 2013 through and including November 5, 2013. By order entered on September 23, 2013 (Dkt. 68), the court authorized the trustee to retain the applicant as his account (the "Employment Order"). No earlier effective date of employment was specified in the Employment Order, so the applicant's employment was effective as of September 23, 2013. 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 the applicant's employment retroactive to September 10, 2013, the first date on which services were rendered, according to the invoices. The request for an earlier 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 to state an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). Here, the employment application was filed on September 11, 2013. The court allows an earlier effective date of employment to August 12, 2013, which is 30 days prior to the filing date of the employment application.

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.

52. [12-36170](#)-B-7 FELIX ABU AMENDED MOTION TO COMPEL
FOA-1 ABANDONMENT
11-14-13 [[107](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the following real properties is deemed abandoned: (1) 6999 Romanzo Way, Elk Grove, CA 95758, and (2) 6113 Tom Way, Elk Grove, CA 95757. Additionally, the estate's interest in various personal property more fully described in the motion (Dkt. 107, p.4-7) and listed on amended Schedule B (Dkt.77, p.4) are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the various real and personal property cited in the motion, after accounting for all encumbrances and claimed exemptions, have no equity available for distribution to creditors. The debtor has proven that these properties are of inconsequential value and benefit to the estate.

The court will issue a minute order.

53. [12-30771](#)-B-7 JOSEPH/REGINA MILLER MOTION TO APPROVE SALE OF REAL
DNL-3 PROPERTY
11-19-13 [[95](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to sell the real property located at 867 Westchester Road, Beaumont, CA 92223 (the "Property") GY Corporation on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit "C" to the motion (Dkt. 97, p.41), provided that the court's ruling does not authorize sale of the Property to any other purchaser, does not authorize sale of the Property free and clear of liens, and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. The trustee is further authorized pursuant to 11 U.S.C. § 330(a) to pay the her real estate brokers, Seaway Properties Real Estate, Inc. and Coldwell Bankers, through escrow, a commission totaling six percent (6.00%) of the gross proceeds of the sale for actual, necessary services performed and actual, necessary expenses incurred. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

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

the hearing.

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

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

54. [13-28877](#)-B-7 DAYA SINGH MOTION TO COMPEL ABANDONMENT
GK-1 11-12-13 [[16](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted in part, and the estate's interest in the real property located at 6128 Lemon Bell Way, Sacramento, CA 95824 (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Property, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The debtor has proven that the Property is of inconsequential value and benefit to the estate. The chapter 7 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

55. [13-28877](#)-B-7 DAYA SINGH MOTION TO AVOID LIEN OF AMEX
GK-2 ASSURANCE COMPANY
11-15-13 [[27](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Amex Assurance Company, recorded in the official records of Sacramento County, Book. No. 20100602, is avoided as against the real property located at 6128 Lemon Bell Way, Sacramento, CA 95824.

The subject real property has a value of \$189,000.00 as of the date of the petition. The unavoidable liens total approximately \$120,734.63. The debtor claimed the property as exempt under California Code of Civil Procedure Section 704.730 under which he exempted \$68,265.37. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

56. [13-32882](#)-B-7 BALTEJ SINGH AND BALJIT CONTINUED MOTION TO COMPEL
TOG-4 KAUR ABANDONMENT
10-22-13 [[10](#)]

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

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the business known as "Gill Trucking," listed at item number 35 on Schedule B (Dkt. 19, p.4), as well as the "Tools of the Trade" listed at item number 29 on Schedule B (Dkt. 19, p.4) (collectively, the "Business"), are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Business, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The debtors have proven that the Business is of inconsequential value and benefit to the estate.

The court will issue a minute order.

57. [12-26588](#)-B-11 IRVING/FRANCES DUMM MOTION TO DISMISS CASE AND/OR
PD-1 MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7
11-5-13 [[105](#)]

Tentative Ruling: The motion is granted, and the instant case is dismissed. Pursuant to 11 U.S.C. § 109(g)(1), the debtors may not commence a bankruptcy case for a period of 180 days after entry of the order dismissing this case. Except as so ordered, the motion is denied.

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

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

Second, under section 1112(b)(2), the court may not convert or dismiss

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

(A) There is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

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

11 U.S.C. § 1112(b)(2)(A)-(B).

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

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

The court further finds that the debtors have not established that, even though cause exists, the case should not be dismissed or converted. The debtors' only response to this motion has been a statement of non-opposition to convert the case to one under chapter 7 (Dkt. 110). The debtors have failed to meet their burden under sections 1112(b)(2)(A) and (B).

The court makes no finding of unusual circumstances that would establish that dismissing or converting this case would not be in the best interests of creditors and the estate.

The court finds that dismissal of this case is in the best interest of creditors and the estate. As set forth in the motion, the estate appears to contain no assets that could be liquidated for the benefit of unsecured creditors. The court further finds that the cause shown in the motion, the debtors' failure to file monthly operating reports for the months of October and November 2013, and the failure of the debtors to file a chapter 11 plan and disclosure statement as required by the court's Order After Status Conference issued on June 21, 2012 (Dkt. 41), all constitute willful failure to abide by orders of the court and willful failure to appear before the court in proper prosecution of the case.

The court will issue a minute order.

58. [11-20489](#)-B-7 LWGC, INC.
GAG-1

MOTION FOR COMPENSATION FOR
GONZALES AND SISTO, LLP,
ACCOUNTANT(S), FEES: \$3,091.85,
EXPENSES: \$0.00
11-19-13 [[210](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$3,091.85 in fees and \$0.00 in expenses, for a total of \$3,091.85, payable as a chapter 7 administrative expense, for the period of November 28, 2011, through July 31, 2013. Except as so ordered, the motion is denied.

By order entered January 10, 2012 (Dkt. 178), the court authorized the chapter 7 trustee to retain Gonzales and Sisto, LLP (the "Applicant") as accountant for the trustee with an effective date of employment of November 28, 2011. The Applicant now seeks compensation for services rendered and costs incurred during the period of November 28, 2011, through and including July 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.

59. [11-20489](#)-B-7 LWGC, INC.
SLF-9

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE SUNTAG LAW
FIRM FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S), FEES:
\$10,000.00, EXPENSES: \$0.00
11-19-13 [[205](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$10,000.00 in fees and expenses, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period of January 10, 2011 through and including December 17, 2013. By order entered on February 21, 2011 (Dkt. 21), the court authorized the trustee to retain the applicant as counsel in this case. The applicant's employment was effective January 10, 2011. The fees and costs requested are approved in full. The court notes that it would ordinarily reduce the applicant's fees because it has charged for an unnecessary CourtCall appearance on December 17, 2013. This matter is

being disposed of without oral argument. Therefore, a telephonic appearance is not required. However, because the applicant has already agreed to a substantial fee reduction in this case, the requested fees are approved in full. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

60. [08-32280](#)-B-7 HEAVEN INVESTMENT MOTION TO VACATE STAY
[09-2334](#) HOLDING CORP. DNL-1 11-14-13 [[75](#)]
SMITH V. BHAMANI ET AL

Tentative Ruling: The defendants' opposition is sustained for the reasons set forth therein. The motion is denied without prejudice to filing another motion once sentencing of the defendants in their parallel criminal proceeding is complete. The plaintiff's request that the defendants be required to post a bond as a condition to continuing the stay of this adversary proceeding is denied.

The plaintiff seeks an order vacating the stay of this adversary proceeding that the court implemented by order entered November 8, 2010 (Dkt. 71). However, the plaintiff, who also serves as the chapter 7 trustee in the parent bankruptcy case, has failed to demonstrate in either her motion or reply brief what prejudice, if any, she or the bankruptcy estate will suffer as a result of the stay remaining in place through sentencing in the defendants' criminal proceeding. As such, the motion is denied.

The plaintiff's request that the defendants be required to post a bond as a condition to continuing the stay of this adversary proceeding is denied because the plaintiff has failed to cite to or analyze the relevant Ninth Circuit authority in support of such a request. LBR 9014-1(d) (5).

The court will issue a minute order.