UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 12, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 1, 9

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON APRIL 9, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 26, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 2, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION FOR
DNL-19 ADMINISTRATIVE EXPENSES
2-26-18 [345]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests the allowance of payments of 2018 estimated post-petition estate income tax liability to the California Franchise Tax Board in the amount of $800.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax – (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on June 8, 2012. The tax liability is being incurred in 2018. As the tax is being incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

2. 17-27321-A-7 CANTECA FOODS, INC. MOTION FOR
RAS-1 RELIEF FROM AUTOMATIC STAY
HITACHI CAPITAL AMERICA CORP. VS. 1-18-18 [47]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Hitachi Capital America Corp., seeks relief from the automatic stay as to several Isuzu vans.

First, the motion does not sufficiently describe the property as to which it is seeking relief from stay. It merely references Isuzu vans, refers to four security agreements between the debtor and the movant in the motion, and refers to personal property described in an agreement. The specificity of description of the property as to which the movant is seeking relief is particularly important here because the debtor owns numerous vehicles, many of which are Isuzu vehicles.

Second, the motion will be denied also because the court entered an order on February 26, 2018, authorizing the sale of numerous vehicles owned by the estate, including several Isuzu vehicles. Dockets 82 & 83. The court cannot

determine from this motion whether it concerns the same vehicles the trustee was authorized to sell.

3. 17-28324-A-7 MORTIMER/ARLENE JARVIS — MOTION TO AVOID JUDICIAL LIEN
DL-1
VS. INDEMNITY COMPANY OF CALIFORNIA — 1-3-18 [10]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Indemnity Company of California on May 12, 1997. A renewed judgment was entered on January 17, 2017 for the sum of $1,231,604.13. Abstract of the renewed judgment was recorded with Sutter County on May 9, 2017. That lien attached to the debtors' interest in a residential real property in Yuba City, California. The debtors are seeking lien avoidance pursuant to 11 U.S.C. § 522(f)(1).

Indemnity Company of California opposes the motion.

Debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

First, the court is satisfied that the debtors are entitled to the claimed $175,000 exemption in the subject property.

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

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

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

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

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

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

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

"*(C) A person 55 years of age or older with a gross annual income of not more*

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

As the exemption claim is for $175,000, it is being asserted under subsection 704.730(a)(3). The debtors were born in 1933 and 1934, meaning that they satisfy the requirements of Cal. Civ. Proc. Code § 704.730(a)(3)(A). Docket 61.

Second, the debtors have asserted that the California Employment and Development Department lien is in the amount of $110,175.71, based on the Department's unsecured proof of claim against the estate for that amount. Docket 60 at 4; POC 2.

The fact that the California Employment and Development Department filed an unsecured proof of claim does not negate its lien for taxes as filed against the property. The lien is evidenced by the preliminary title report. See POC 2. And, the amount of the Department's lien against the property is at least $110,175.71 inasmuch as the most current of Notice of State Tax Lien Extension dated November 4, 2015 indicates the taxes are $128,539.34. Docket 36 at 20 (Ex. D). The discrepancy in amount between the proof of claim and the notice of tax lien extension and statement of collection is attributable to the satisfied "responsible person" penalties and associated interest. Docket 37; Docket 36 at 29 (Ex. I).

Third, the debtors have established that as of the petition date, the amount owed on the first mortgagee's claim, Wells Fargo Home Mortgage, was $69,249.25. Docket 62 at 2 (Ex. J).

Finally, on the issue of valuation, the debtors should note that Mr. Jarvis' initial declaration valuing the property did not qualify him as an expert witness. See Docket 12. Notwithstanding this, Mr. Jarvis established his qualification as an expert in the reply. He is a licensed real estate broker. As such, Mr. Jarvis' updated valuation for the property, of $381,801, is admissible.

The creditor asserts that the value of the property is $400,000.

The court does not accept or believe either valuation. Both are deficient. For instance, the debtors' valuation takes into account some deferred maintenance issues, including:

a. "deferred maintenance including painting and fence repair,"
b. "maintenance on the pool including repair of the cracked and leaking edges,"
c. "[c]onversion of our living room into a bedroom including the framing in of the previously open arched entry to a regular door and the adding of a closet,"
d. "[m]oisture in the ceiling of the upstairs bathroom and hallway which has yet to be fully investigated,"
e. "[l]ack of remodeling or upgrades to our Residence since the late 1990's,"
f. "[a]ged heating and air system, water heater and kitchen appliances, all of which are 25 years old,"
g. "[t]he presence of an old gas tank buried in our backyard which has been filled
with sand and water."

Docket 61 at 2.

There is little or no detail about these issues in the debtors' evidence. For example, Mr. Jarvis' declaration says nothing about the painting and fence repair issues. It also does not explain what remodeling or upgrades are needed, and the evidence does not elaborate how or by how much the conversion of a living room into a bedroom decreased the value of the property. Under some circumstances, converting a living room into a bedroom would increase the value of the property. See Docket 61.

The creditor's valuation is also deficient. It acknowledges that it is based only on a cursory inspection of the outside of the home. The court has no evidence, for instance, that Mr. Dorman inspected the fenced outside of the property.

Because the debtors have the burden of proof of the issue of valuation, the motion must be denied.

4. 17-28324-A-7 MORTIMER/ARLENE JARVIS — MOTION TO COMPEL ABANDONMENT
DL-2 — 1-3-18 [15]

Tentative Ruling: The hearing on the motion will be continued to May 21, 2018 at 10:00 a.m.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property on Marcia Avenue in Yuba City, California. The property is over-encumbered for purposes of computing a benefit to the estate.

The trustee and secured creditor Indemnity Company of California oppose the motion.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The property is encumbered presently by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount of approximately $68,000 (Docket 62), a lien in favor of the California Employment and Development Department for $110,175.71, and a judicial lien in favor of Indemnity Company of California for $1,231,604.13. In addition, the debtors have claimed an exemption of $175,000 under Cal. Civ. Proc. Code § 704.730(a)(3) in the property.

While the debtors have established that there is no equity in the property for the estate, the trustee retained counsel approximately five weeks ago and he is exploring filing an action to avoid the penalties and interest on penalties accrued on account of the California Employment and Development Department claim. Docket 42. The trustee is also actively pursuing carve-out agreement negotiations with Indemnity. See Dockets 33 & 42. As such, the court is inclined to give the trustee some additional time to determine whether he can administer the property for the benefit of the creditors and the estate.

The trustee shall have 60 days to file an action for avoiding at least a portion of California Employment and Development Department's claim and to file a motion for approval of a carve-out agreement with Indemnity. The hearing on this motion will be continued to May 21, 2018 at 10:00 a.m.

5. 13-20550-A-7 DIANE/WILLIAM HORTON
BHS-2

MOTION TO APPROVE COMPROMISE AND COMPENSATION FOR SPECIAL COUNSEL
2-12-18 [46]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of two settlement agreements in two medical device litigations, one with Boston Scientific MDL and another with Medical Device Manufacturer. The trustee is also asking for approval of the compensation of the estate's special counsel prosecuting the subject claims. The court entered an order on July 19, 2017 approving the estate's employment of special counsel, consisting of three law firms, including Ford & Associates (formerly Steigerwalt & Associates), Burke, Harvey & Frankowski, and Mueller Law Firm. Docket 30. The terms of compensation are a 40% contingency fee agreement. Id.

Under the terms of the compromise with Boston Scientific, the defendant will pay $70,000 in exchange for full settlement of the estate's claims. From that amount:

- $3,500 will be paid pursuant to a court-ordered medical device litigation assessment,

- $5,320 will be paid as fees to Burke, Harvey & Frankowski,

- $174.38 will be paid as expenses to Burke, Harvey & Frankowski,

- $7,980 will be paid as fees to Ford & Associates,

- $12,950 will be paid as fees to Mueller Law Firm (reduced by $350),

- $1,594.87 will be paid as expenses to Mueller Law Firm,

- $961 will be paid as miscellaneous fees to an unidentified person, and

- $3,554.85 will be paid on account of a medical lien.

The estate will receive a net of proceeds in the amount of $33,964.90.

Under the terms of the compromise with Medical Device Manufacturer, the defendant will pay $104,800.06 in exchange for full settlement of the estate's claims. From that amount:

- $5,240 will be paid pursuant to a court-ordered medical device litigation assessment,

- $11,947.21 will be paid as fees to Burke, Harvey & Frankowski,

- $7,964.80 will be paid as fees to Ford & Associates,

- $19,912.01 will be paid as fees to Mueller Law Firm,

- $1,594.87 will be paid as expenses to Mueller Law Firm,

- $611 will be paid as miscellaneous fees to an unidentified person, and

- $931.81 will be paid on account of a medical lien.

The estate will receive net of proceeds in the amount of $56,598.35. In total, the estate will receive net proceeds from the settlements in the amount of $90,563.25. This will be sufficient to pay "[a]ll timely proofs of claim" filed against the estate, totaling $12,197.08.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The motion will be denied for several reasons:

First, the motion says that there will be a 100% dividend to holders of the timely filed claims. It says nothing about whether untimely claims have been filed and whether such claims would be paid.

Second, the court cannot approve the requested special counsel compensation because there is only a declaration in support of the motion from Mueller Law Firm. There are no declarations from the other two firms representing the estate.

Third, while the court approved the employment of special counsel *prospectively* only in July 2017, special counsels were retained by the debtor Diane Horton in February 2011 and the bankruptcy case was filed on January 16, 2013, meaning that special counsel have represented the estate's interest in the litigation since January 2013. Docket 30. The court sees no order approving any of special counsel's employment with the estate retroactively to when the litigation became property of the estate.

Fourth, while the court understands that the attorneys may not have kept contemporaneous time records, this does not excuse them from producing some evidence on the reasonableness and necessity of their compensation, including information such as what services they have provided to the estate, how much time they have spent on the services, etc. This is not in the record. Even the supporting declaration from Ronald Karz at the Mueller Law Firm says nothing helpful on these points. Docket 42.

As such, the court is unwilling to grant the motion at this time.

6.	16-25666-A-7 DMW-3	THOMAS MALONEY AND ANN THOMAS	MOTION TO SELL 2-6-18 [59]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $425,000 the estate's interest in a real property in Browns Valley, California to Carrie Gibbs. The property was valued at $465,000 in the debtors' original schedules. The debtors filed amended schedules on December 12, 2016 and lowered the value to

$350,000.00.

The trustee also asks for approval to pay through escrow the 5% real estate commission, any secured liens or encumbrances which may be discovered through the title report, and any pro-rata taxes or home owner's fees that may be due at time of closing. The trustee requests waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

Secured creditor Wells Fargo Bank, N.A. filed a conditional opposition.

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

The property is subject to the following encumbrances:

- a home equity loan in favor of Chase for $98,000.00;

- a mortgage in favor of Wells Fargo for $281,308.90.

Wells Fargo has advised it is not opposed to the granting of the motion on the condition that the following provisions be included in the proposed order: "Either Wells Fargo will be paid in full subject to a proper payoff quote, or that any sale short of full payoff will be subject to Wells Fargo's final approval."

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate subject to the condition that the order include the language requested by Wells Fargo.

The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

7.	17-25481-A-7 HSM-4	JOHN ROSE	OBJECTION TO EXEMPTIONS 2-16-18 [54]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be abated until the nonbankruptcy forum or a settlement liquidates the suit claimed exempt by the debtor.

The trustee objects to the debtor's claim of exemption pursuant to Cal. Civ. Pro. Code § 704.140 in a personal injury cause of action with a scheduled value of "unknown." Dockets 20 & 57, Ex. A.

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

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

The debtor and the trustee signed a stipulation extending the deadline to object to the debtor's claim of exemptions to March 1, 2018. Docket 45. This objection, filed on February 16, 2018, is timely. Docket 54.

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

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."

However, "Federal Rule of Bankruptcy Procedure 4003(c) may not shift the burden of proof on an objection to a state-law claim of exemption in a manner contrary to state law." In re Tallerico, 532 B.R. 774, 776 (Bankr. E.D. Cal. 2015).

"Under the California exemption scheme, the exemption claimant has the burden of proof." Cal. Civ. Pro. Code § 703.580(b).

As of the petition date, the debtor had a cause of action for personal injury that is included in a suit that also includes nonpersonal injury claims. The suit is pending. Because exemptions are fixed as of the petition date, the debtor asserted an exemption in the personal injury cause of action under section 704.140.

Subsection (a) of Cal. Civ. Pro. Code § 704.140 provides that "a cause of action for personal injury is exempt without making a claim." Subsection (b) of CCP § 704.140 states that "an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

The Bankruptcy Appellate Panel for the Ninth Circuit has clarified that "[s]ubsections (a) and (b) [of Cal. Civ. Pro. Code § 704.140] are not mutually exclusive; subsection (b) defines the scope of exemption identified in subsection (a). . . . [B]oth provisions govern the exemption in the personal injury claim." In re Gose, 308 B.R. 41, 48 (B.A.P. 9th Cir. 2004). That is, subsection (b) limits the amount that a claimant may exempt under CCP § 704.140 regardless of whether a personal injury cause of action has been reduced to judgment or settlement as of the petition date. Id. Thus, subsection (b) of CCP § 704.140 is applicable here to determine the amount of any personal injury proceeds that the debtor may receive from an action claimed exempt under § 704.140(a).

Although the reasoning set forth in the trustee's objection is somewhat convoluted, it appears that the trustee objects to the debtor's exemption under both subsections (a) and (b) of Cal. Civ. Pro. Code § 704.140.

First, the objection asserts that the debtor is required to demonstrate "that the claims at issue in the State Court Action (or some portion thereof) are in the nature of 'personal injury'[.]" Docket 54 at 3:10-12. Second, the trustee

contends that if the debtor receives an award for damages in his personal injury action, he must establish the portion of proceeds necessary for the support of the debtor and any dependants.

The court disagrees with the assertion that Cal. Civ. Pro. Code § 704.140 imposes a burden on a claimant to prove "the nature" of a personal injury cause of action, at least in this case and at this time. The debtor's exemption in his amended schedule C describes as follows:

"*Personal injury cause of action for a HIPPA violation. Attorney on HIPPA claim has an attorney lien of 40% on the settlement amount. It may be higher if this is taken to trial. $100,000.00 settlement offer to the Debtor was offered by Defendant Dr. Derek.*"

Docket 20.

The debtor, then, has claimed an exemption in a "personal injury cause of action." If the debtor's claim is not a personal injury claim, it is not exempt.

If the nonbankruptcy court awards damages, or if the suit is settled with the permission of this court, the trustee shall restore this objection to calendar so the court may determine how much has been awarded on the personal injury claim, as opposed to other claims, and then determine how much of the award is necessary for the support of the debtor.

8. 16-28083-A-7 STEPHEN LEMOS — MOTION TO SELL
BHS-6 — 1-24-18 [57]

Amended Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $90,000 the estate's one-half interest in real property in Lake Tahoe, California to Global Capital Concepts, Inc. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The debtor and his non-filing spouse have a 50% interest in the property, held in the name of "The Stephen D. and Susan C. Lemos Trust Dated November 3, 2011." The property has a scheduled value of $374,887 subject to a secured debt in the amount of $165,259. The trustee believes the entire property has a fair market value of $452,000. After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property.

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

Overbidding shall start at $90,500 with overbids in minimum $500 increments. Overbidders must qualify with a $5,500 deposit.

At the hearing held on February 26, 2018, overbidders were present. After learning that the debtor and his non-filing spouse may have inherited the 50% interest in the subject property from the debtor's parents, the court expressed concern as to whether the property being sold was community or separate property under California law. Only the former would be property of the

bankruptcy estate. If the property is the separate property of the spouses, only the debtor's interest is property of the bankruptcy estate. In that event, absent compliance with 11 U.S.C. § 363(h), the trustee may liquidate only the debtor's 1/4 interest in the property, not the 1/2 interest owned by the debtor and his nonfiling spouse. See 11 U.S.C. §§ 363(h) & 541(a).

Under California law, inheritances acquired during marriage are the separate property of the recipient spouse. However, the community may acquire an interest in such separate property if community property is used to improve it, and separate property may be transmuted into community property.

Cal. Family Code § 852(a) provides: "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected."

Transmutation can occur when the recipient spouse takes an action that indicates the intent to change the nature of the inheritance from separate property to community property. For example, if one spouse inherits real estate and places the deed in the joint names of both spouses, the property may be transmuted into community property.

Proof of transmutation in California requires "clear and unambiguous language of intent to transfer an interest in the property." See, e.g. Estate of McDonald, 51 Cal.3d 262, (1990) (holding that a writing signed by the adversely affected spouse is not an "express declaration" for purposes of section 852, subdivision (a)). See also In re Summers, 332 F.3d 1240, 1245 (9th Cir. 2003)(citing Estate of Bibb, 87 Cal. App. 4th 461, 468,(2001) (holding that the term "grant" demonstrated requisite intent to transmute)).

In Estate of Bibb, 87 Cal. App. 4th 461 (2001), the court considered a deed transferring the husband's separate property interest in a lot and apartment complex to himself and his second wife as joint tenants. Id. at 464-65. Applying MacDonald, the court concluded that the customary words of grant in the deed were sufficient to transmute the husband's separate property into community property. Id. at 468. The court noted, "since 'grant' is the historically operative word for transferring interests in real property, there is no doubt that [the husband's] use of the word 'grant' to convey the real property into joint tenancy satisfied the express declaration requirement of section 852, subdivision (a)." Id. at 468-69.

The facts here closely mirror those in Estate of Bibb. In 1985, the debtor was granted a separate property interest in the subject property. Docket 71, Ex. B. In 1995, the debtor then signed and recorded a deed transferring his separate property interest to himself and his non-filing spouse, as joint tenants. Docket 71, Ex. C. As in Bibb, the deed establishing joint tenancy included the word "grant." Therefore, the court is satisfied that the property was transmuted, for purposes of section 852(a) into joint tenancy which is the community property of the debtor and his spouse. As such, the trustee may sell the community's entire interest even though the debtor's spouse has not joined in his bankruptcy case. See 11 U.S.C. § 541(a)(2).

The motion will be granted.

9. 17-22588-A-7 JAY/SUZANNE DYER
DNL-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
2-16-18 [62]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $13,877.50 in fees and $71.44 in expenses, for a total of $13,948,94. This motion covers the period from June 7, 2017 through February 9, 2018. The court approved the movant's employment as the trustee's attorney on July 10, 2017. In performing its services, the movant charged an hourly rate of $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the sale of real and personal property; (2) reviewing schedules and other petition documents, (3) preparing and filing stipulations extending the deadline for filing objections to discharge, and (4) preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred

FINAL RULINGS BEGIN HERE

10. 16-21112-A-7 KENDALL BROOKS
JMH-1

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
2-12-18 [129]

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

The motion will be granted.

The chapter 7 trustee, J. Michael Hopper, has filed first and final motion for approval of compensation. The requested compensation consists of $22,528.24 in fees and $0.00 in expenses. The services for the sought compensation were provided from February 26, 2016 through the present.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $385,564.73 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $22,528.24 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $16,778.24 (5% of the next $950,000 ($335,564.73)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $22,528.24 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interest in real property,

(4) employing professionals to assist the trustee with the administration of the estate,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(8) addressing tax and accounting issues,

(9) preparing final report, and

(10) preparing compensation motion.

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

The court reminds the movant to include information about how much time he has spent on the services provided to the estate.

11. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION FOR ADMINISTRATIVE EXPENSES
ASF-5 2-6-18 [263]

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

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability (including in part estimated tax liability) for the 2017 and 2018 tax years as follows: $829 to the California Franchise Tax Board for 2017 and $800 to the California Franchise Tax Board for 2018 (estimated).

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax – (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on March 15, 2013. The tax liability in question was incurred in 2017 and is being incurred in 2018. As the tax is being incurred post-petition, the court will allow its payment as an administrative expense

claim under section 503(b)(1)(B). The motion will be granted.

12. 17-27321-A-7 CANTECA FOODS, INC. MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
TOYOTA MOTOR CREDIT CORP. VS. 1-31-18 [65]

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

The motion will be granted.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2017 Toyota Prius. The movant has produced evidence that the vehicle has a value of $21,850 and its secured claim is approximately $20,777. Docket 67.

While there was little equity in the vehicle when this motion was filed on January 31, the debtor is not operating and has not been making payments to the movant on account of its claim. The debtor has not made three post-petition payments to the movant. This is cause for the granting of relief from stay as to the debtor.

With respect to the estate, the equity in the vehicle, approximately $1,073, cannot be practically realized for the estate, when one takes into account administration and liquidation costs. Moreover, the trustee has filed a non opposition to this motion. This is cause for the granting of relief from stay as to the estate.

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

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Docket 68 at 5. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of

the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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

13. 17-26125-A-11 FIRST CAPITAL RETAIL, L.L.C. GEL-1
18-2017
FIRST CAPITAL RETAIL, L.L.C. V. FIRST CAPITAL REAL ESTATE

MOTION FOR PRELIMINARY INJUNCTION
2-19-18 [7]

Final Ruling: The hearing on this motion has been continued to March 19, 2018 at 10:00 a.m. Docket 22.

14. 18-20449-A-7 BENNY/TRACY GARNER

ORDER TO SHOW CAUSE
2-14-18 [17]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtors did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments.

However, the debtors paid the fee in full on February 14, 2018. No prejudice has resulted from the delay.

15. 13-20550-A-7 DIANE/WILLIAM HORTON
BHS-1

MOTION TO EMPLOY AND TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
2-12-18 [34]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval to employ The Law Office of Barry Spitzer as counsel for the estate. Spitzer will assist the estate with the administration of a previously undisclosed product liability cause of action, including the preparing, filing, and prosecution of a motion to approve a settlement agreement of the cause of action. The proposed compensation is a flat fee of $4,000, inclusive of all out-of-pocket costs. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Spitzer is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

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

16. 17-27367-A-7 PETER/CARIDAD KOZAK — MOTION TO APPROVE COMPROMISE
SLF-3 — 2-12-18 [27]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and the debtors on the other, regarding the estate's interest in attorney referral fees owed to the debtor and prepetition payments made to academic institutions.

In their petition, the debtors listed the value of the attorney referral fee collectibles as "unknown." The debtors later informed the trustee that the

referral fees would likely total $63,000 ($43,000 of which is nonexempt). The trustee asserts that the debtors' business is likely worth more than the $3,160 the debtors claimed exempt. The trustee further asserts that the debtors' transfers of funds in the aggregate amount of $42,000 to their sons' academic institutions are avoidable as fraudulent transfers.

In contrast to the trustee's position, the debtors contend that the referral fees are not definite and that it is unknown how much of each fee will be paid - if paid at all. They further contend that some of the fees are subject to federal tax levy. The debtors assert that the business has $10,000 in debt and an office lease of $2,350 per month with two years remaining. Finally, the debtors contend that much of the funds provided to their sons were for costs of living that the debtors would have spent had their sons remained at home to attend college.

Under the terms of the compromise, the debtors will pay $40,000 to the estate for the estate's nonexempt interest in the referral fees, the business, and the pre-petition payments to academic institutions. The debtors will pay $15,000 at the time of signing the agreement. The remaining $25,000 will be paid in 11 monthly installments of $2,050 beginning March 1, 2018 with a final monthly payment of $2,450 on March 1, 2018. If the trustee has received a total of $35,000 by the close of business on October 1, 2018, the settlement amount is reduced to $35,000. If the trustee has received a total of $30,000 by the close of business on July 1, 2018, the settlement amount is reduced to $30,000.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the difficulty assigning a precise value to a collectable debt and the inherent costs, risks, delay and inconvenience of further litigation, and that the settlement proceeds will pay some estate claims, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

17. 17-23871-A-7 CAROL NEWMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 2-6-18 [19]
JPMORGAN CHASE BANK, N.A. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

Movant Citizens Bank seeks relief from the automatic stay with respect to a 2015 Subaru Forester. Given the entry of debtor's discharge on September 18, 2017, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to debtor.

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

Debtor has failed to make eight post-petition payments to movant, and a review of the case docket indicates that the trustee has not made any efforts to sell the property. The court also notes that the trustee has filed no response to this motion and, moreover, he filed a report of no distribution on September 6, 2005. Based on this, the court finds cause for the granting of relief from stay. In addition, movant has submitted evidence that the Kelly Blue Book fair market value of the vehicle is $19,128, whereas movant's claim secured by the vehicle totals $20,771. Hence, the court finds that there is no realizable equity in the vehicle, it is not necessary to a reorganization, and there is no likelihood the trustee can administer the vehicle for the benefit of creditors.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that movant's vehicle is being used by debtor without compensation and is depreciating in value.

Because movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

18. 18-20274-A-7 ALEXANDRIA O'GARA — MOTION FOR RELIEF FROM AUTOMATIC STAY
JQM-1
THE SCREENMOBILE CORPORATION VS. — 2-6-18 [15]

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

The motion will be granted.

The movant, The Screenmobile Corporation, seeks relief from the automatic stay to proceed in state court with its claim for replevin against the debtor. Recovery will be limited to replevin of the debtor's phone number, if any. The

replevin claim is in rem in nature, and the debtor does not have any monetary interest in the phone number.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied by in rem recovery of the debtor's phone number, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

19. 16-26175-A-7 JEFFERY NUXOLL
DMW-3

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
1-30-18 [38]

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

The motion will be granted.

The chapter 7 trustee, Douglas Whatley, has filed first and final motion for approval of compensation. The requested compensation consists of $21,896.50 in fees and $470.15 in expenses, for a total of $22,366.65. The services for the sought compensation were provided from September 15, 2016 through the present. The sought compensation represents 10.35 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $429,380 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $14,550 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $16,146 (5% of the next $950,000 ($322,930) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $21,896.50 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress

would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interest in real property,

(4) employing professionals to assist the trustee with the administration of the estate,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(8) addressing tax issues,

(9) preparing final report, and

(10) preparing compensation motion.

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

20. 18-20481-A-7 MIKAYLA SCOTT — ORDER TO SHOW CAUSE 2-14-18 [29]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

The debtor filed an amended master address list on January 31, 2018, but did not pay the $31 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2). However, the debtor paid the filing fee on February 15, 2018. No prejudice has resulted from the delay.

21. 17-25594-A-7 ADJ-2 RAYMUND CRUZ AND JO ANN BANARIA CRUZ — MOTION TO APPROVE COMPROMISE 2-7-18 [21]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at

least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and the debtors over any potential claims the trustee might have against funds held in two Wells Fargo bank accounts. The dispute was precipitated by the debtor Jo Ann Cruz's contention that she was merely a custodian for funds in the amount of $28,307.82 held in bank accounts under her name. The debtors contend that Mrs. Cruz held title to the checking and savings accounts as a custodian for her parents, who live in the Philippines. Mrs. Cruz relies on the evidence that she never withdraws funds from the disputed accounts to support her position. Bank statements show that Mrs. Cruz's mother regularly transferred $1,000-$1,500 per month to the checking account for at least the year preceding the petition date. Over the past year, there were a few minimal withdrawals or payments from the checking account.

The trustee disputes the debtors' position because there is no written instrument creating a trust or custodial relationship between Mrs. Cruz and her parents. Further, the parents maintain their own bank accounts in the United States and regularly access the funds therein while in the Philippines as shown by bank statements. The trustee thus concluded that it was not necessary for Mrs. Cruz to act as a custodian.

Under the terms of the compromise, the trustee will retain the amount of $12,500 in full satisfaction of any and all claims the trustee may have against the account funds. The trustee will disburse the balance of funds ($15,807.82), less any bank charges, to Mrs. Cruz.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake and the inherent costs, risks, delay and inconvenience of further litigation, and that the settlement proceeds will pay estate claims, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

22. 17-26295-A-7 RICHARD/LINDA WALTHER MOTION TO
BLG-1 COMPEL ABANDONMENT
2-7-18 [28]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property, located at 641 Klamath Way, in Suisin City, California. The entire equity in the property is exempt. No oppositions have been filed.

The trustee filed a statement of nonopposition on February 25, 2018.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtors have scheduled the value of the property at $400,000.00. The property is encumbered by a first deed of trust in favor of Select Portfolio Servicing, Inc. in the amount of $236,690.92 and a second mortgage in favor of 21st Mortgage in the amount of $23,000.00, for a total of $359,690.92. The debtors have exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730(a)(3).

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $32,000 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.