

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 20, 2014 at 9:32 A.M.

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|----|---------------------------------------|---------------|--|
| 1. | <u>13-30690</u> -B-11 | WILLIAM PRIOR | CONTINUED MOTION FOR LIMITED |
| | <u>13-2288</u> | JWK-2 | MOTION TO STAY DISCOVERY |
| | PRIOR V. TRI COUNTIES BANK ET | | 11-20-13 [<u>48</u>] |
| | AL | | |

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

The motion is continued to July 15, 2014, at 9:32 a.m.

The court will issue a minute order.

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|----|---------------------------------------|---------------|--|
| 2. | <u>13-30690</u> -B-11 | WILLIAM PRIOR | CONTINUED MOTION FOR PROTECTIVE |
| | <u>13-2288</u> | NJR-1 | ORDER |
| | PRIOR V. TRI COUNTIES BANK ET | | 12-17-13 [<u>76</u>] |
| | AL | | |

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

The motion is continued to July 15, 2014, at 9:32 a.m.

The court will issue a minute order.

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| 3. | <u>13-30690</u> -B-11 | WILLIAM PRIOR | CONTINUED MOTION TO AMEND |
| | <u>13-2288</u> | WFH-1 | 2-25-14 [<u>184</u>] |
| | PRIOR V. TRI COUNTIES BANK ET | | |
| | AL | | |

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

The motion is continued to July 15, 2014, at 9:32 a.m.

The court will issue a minute order.

4. [12-28102](#)-B-7 RALPH/SUZANNE EMERSON CONTINUED MOTION TO COMPROMISE
DNL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROBERT K.
STEPHENSON AND/OR MOTION TO
SELL
4-8-14 [[321](#)]

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

This matter is removed from the calendar. By order entered May 15, 2014 (Dkt. 341) the court continued the motion to June 3, 2014, at 9:32 a.m.

5. [14-20010](#)-B-7 ALI/KELLY AKYUZ CONTINUED MOTION TO DISMISS
UST-1 CASE
3-24-14 [[38](#)]

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

The motion is continued to June 17, 2014, at 9:32 a.m., to be heard after the hearing on the debtors's motion to convert the bankruptcy case to one under chapter 13.

The court will issue a minute order.

6. [12-24117](#)-B-7 JOSEPH/WENDOLYN ERBY MOTION FOR COMPENSATION BY THE
HCS-2 LAW OFFICE OF
HERUM\CRABTREE\SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
4-22-14 [[55](#)]

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 \$700.00 in fees and \$0.00 in costs, for a total of \$7000.00, for the period May 24, 2012, through May 1, 2014, payable as a chapter 7 administrative expense to the law firm Herum/Crabtree/Suntag. Except as so ordered, the motion is denied.

By order entered on June 22, 2012 (Dkt. 20), the court authorized the chapter 7 trustee to retain the Suntag Law Firm as counsel for the chapter 7 trustee in this case, with an effective date of employment of

May 24, 2012. On February 1, 2014, the Suntag Law Firm merged with the law firm Herum/Crabtree, to become Herum/Crabtree/Suntag ("HCS"). The court authorized the chapter 7 trustee to employ HCS as counsel for the estate by order entered April 8, 2014 (Dkt. 54), with an effective date of employment of March 2, 2014. The applicant now seeks compensation for services rendered and costs incurred during the period May 24, 2012, through and including May 1, 2014. The court notes that the applicant is seeking approval of fees in an amount substantially reduced from the actual work performed as evidenced by the applicant's billing records. 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. [14-21320](#)-B-7 JUSTIN/SHAUNA SANDERS MOTION TO AVOID LIEN OF CACH, LLC
4-29-14 [[14](#)]

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

The motion is dismissed without prejudice.

The motion suffers from procedural defects. First, and most importantly, the debtors did not properly serve the motion. As a contested matter under Fed. R. Bankr. P. 9014, the motion must be served in accordance with Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. In this case, the debtors served the respondent, CACH, LLC, ("CACH") by mailing the motion to a law firm which represented CACH in the state court proceeding which resulted in the judgment the lien of which the debtors seek to avoid by this motion. However, there is no evidence that the law firm is an agent authorized by law to receive service of process for the purposes of this bankruptcy case. The agency of an attorney may be implied for the purposes of Fed. R. Bankr. P. 7004(b)(3) if (1) the lawyer repeatedly represented the client in the bankruptcy case and (2) the totality of the circumstances demonstrates the intent of the client to convey such authority. In re Focus Media, Inc., 387 F.3d 1077, 1083 (9th Cir. 2004). No such circumstances are evident in this case.

The debtors also did not give proper notice of the motion, as their notice of hearing (Dkt. 15) does not state whether written opposition to the motion is required, the deadline for filing and serving and written opposition, and the names and addresses of persons who must be served with written opposition. LBR 9014-1(d)(3). The debtors also did not utilize a docket control number for the motion, as required by LBR 9014-1(c). The debtors' counsel is advised to review the Federal Rules of Bankruptcy Procedure and the court's local rules before making further filings.

Finally, even if the motion did not suffer from the foregoing procedural defects, it would be denied without prejudice. To successfully avoid a

nonconsensual judicial lien, the debtors must satisfy the following elements:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). In this case, the debtors have not shown the existence of a judicial lien encumbering their residence. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). In this case, the copy of the abstract of judgment filed with the motion (Dkt. 17 at 4) does not bear evidence of recording with the county recorder.

The court will issue a minute order.

8. [14-21923](#)-B-7 PATRICIA LOGAN CONTINUED MOTION TO COMPEL
MOH-1 ABANDONMENT
3-25-14 [[11](#)]

Tentative Ruling: This motion continued from April 8, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

9. [12-37124](#)-B-7 KHALID MAHMOOD MOTION TO COMPEL ABANDONMENT
PGM-2 4-9-14 [[32](#)]

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

The motion is granted. Pursuant to 11 US code § 554(b), the debtor's interest in the real property located at 960 Lake Park Avenue, Galt, California (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Property has a value of \$154,900.00, as set forth on the debtor's sworn Schedule A. The debtor also alleges without dispute that the property is encumbered by secured debt with a balance of \$71,199.54. The debtor has claimed an exemption

in the Property in the amount of \$75,000.00 pursuant to Cal. Civ. Proc. Code § 704.730(a)(1). After subtracting the amount of the debtor's exemption and the amount of the secured debt from the value of the Property, there is little equity in the Property left for the benefit of the estate, without considering additional costs that would be incurred with respect to administration and sale of the Property. The court finds that the Property is of inconsequential value and benefit to the estate.

The court will issue a minute order.

10. [14-24124](#)-B-7 PIOTR/KATIE STACHNIUK MOTION TO COMPEL ABANDONMENT
FF-1 4-25-14 [[7](#)]

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

The motion is continued to July 1, 2014, at 9:32 a.m.

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

The court will issue a minute order.

11. [11-35325](#)-B-7 JAMES COXETER MOTION TO APPROVE AGREEMENT
MPD-19 WITH DEBTOR
4-22-14 [[996](#)]

Tentative Ruling: The motion is continued to June 17, 2014, at 9:32 a.m. for further briefing. On or before June 3, 2014, the chapter 7 trustee shall file and serve supplemental briefing regarding the trustee's evaluation of the economics of the proposed agreement (the "Agreement"), including, but not limited to: 1.) the value of the legal malpractice claim referenced in the motion; 2.) the necessity of employing two law firms to prosecute the legal malpractice claim; 3.) the agreement's proposal to give 50% of the net proceeds of the legal malpractice claim to the debtor, and 4.) legal authority supporting the provision of the stipulation between the trustee and C.J.A Corporation ("CJA") to bind "anyone" or "any party" with respect to possible future objections to CJA's claim. Responses, if any, to the aforementioned supplemental briefing shall be filed and served on or before June 3, 2014.

The court acknowledges that questions regarding the economics of the Agreement were raised in the opposition filed by CJA, and that the trustee has since stipulated to a resolution of CJA's opposition. However, the stipulation does not resolve the points raised by CJA. A

bankruptcy court generally defers to a trustee's business judgment on the issue of managing a bankruptcy estate's resources, see In re 800Ideas.com, Inc., 496 B.R. 165, 182 (9th Cir. BAP 2013) (citing Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 669-71 (9th Cir.2007)), but without a discussion of the economics of the proposed agreement in the motion, the trustee has provided insufficient information to the court or to parties in interest to determine whether the trustee has exercised his business judgment in a prudent and reasonable manner with respect to the Agreement. Accordingly, the motion is continued for further briefing.

The court also orders further briefing on the issue of whether the trustee and CJA can bind non-parties to their stipulation (i.e., "anyone" or "any party," Dkt. 1118 at 2-3) with respect to the stipulation's terms regarding the designation of experts on possible future objections to CJA's claim.

The court will issue a minute order.

12. [11-35325](#)-B-7 JAMES COXETER
MPD-20

MOTION TO EMPLOY ROBERT K. SALL
AS SPECIAL COUNSEL AND/OR
MOTION TO EMPLOY DAVID B.
PARKER AS SPECIAL COUNSEL
4-22-14 [[1002](#)]

Tentative Ruling: The motion is continued to June 17, 2014, at 9:32 a.m. for further briefing. On or before June 3, 2014, the chapter 7 trustee shall file and serve supplemental briefing regarding the trustee's evaluation of the economics of the proposed agreement (the "Agreement"), including, but not limited to: 1.) the value of the legal malpractice claim referenced in the motion; 2.) the necessity of employing two law firms to prosecute the legal malpractice claim; 3.) the agreement's proposal to give 50% of the net proceeds of the legal malpractice claim to the debtor, and 4.) legal authority supporting the provision of the stipulation between the trustee and C.J.A Corporation ("CJA") to bind "anyone" or "any party" with respect to possible future objections to CJA's claim. Responses, if any, to the aforementioned supplemental briefing shall be filed and served on or before June 3, 2014.

The court acknowledges that questions regarding the economics of the Agreement were raised in the opposition filed by CJA, and that the trustee has since stipulated to a resolution of CJA's opposition. However, the stipulation does not resolve the points raised by CJA. A bankruptcy court generally defers to a trustee's business judgment on the issue of managing a bankruptcy estate's resources, see In re 800Ideas.com, Inc., 496 B.R. 165, 182 (9th Cir. BAP 2013) (citing Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 669-71 (9th Cir.2007)), but without a discussion of the economics of the proposed agreement in the motion, the trustee has provided insufficient information to the court or to parties in interest to determine whether the trustee has exercised his business judgment in a prudent and reasonable manner with respect to the Agreement. Accordingly, the motion is continued for further briefing.

The court also orders further briefing on the issue of whether the trustee and CJA can bind non-parties to their stipulation (i.e., "anyone" or "any party," Dkt. 1121 at 2-3) with respect to the stipulation's terms regarding the designation of experts on possible future objections to CJA's claim.

The court will issue a minute order.

13. [14-22027](#)-B-7 NOEL DELEON CONTINUED MOTION TO COMPEL
TAW-1 ABANDONMENT
3-19-14 [[9](#)]

Tentative Ruling: This motion continued from April 8, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

14. [14-21828](#)-B-7 JOEL/STEPHANIE MITCHELL OBJECTION TO DEBTORS' CLAIM OF
JRR-1 EXEMPTIONS
4-16-14 [[14](#)]

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

The objection is sustained. The debtors' claims of exemption in a .22 caliber rifle, a Smith and Wesson revolver and a shotgun under Cal. Civ. Proc. Code § 704.070 and in an insurance check for the total loss of a 2006 Pontiac automobile under Cal. Civ. Proc. Code § 704.140 are disallowed.

The trustee's objections are sustained for the reasons set forth therein.

The court will issue a minute order.

15. [13-32529](#)-B-7 GARY/DEBRA CAMPBELL MOTION TO EXTEND TIME FOR
HSM-6 TRUSTEE TO FILE OBJECTIONS TO
DEBTORS' CLAIMS OF EXEMPTIONS
4-2-14 [[84](#)]

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

The motion is granted. The deadline for the chapter 7 trustee to file an objection to the debtors' claims of exemption is extended to and

including June 2, 2014. Except as so ordered, the motion is denied.

The court will issue a minute order.

16. [14-20230](#)-B-7 KRISTINE KAVANAGH MOTION TO AVOID LIEN OF
MOH-1 VELOCITY INVESTMENTS, LLC
4-11-14 [[16](#)]

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 Velocity Investments, LLC recorded in the official records of Butte County, Document No. 2013-0048262, is avoided as against the real property located at 4949 Foster Road, Paradise, California.

The subject real property has a value of \$140,652.00 as of the date of the petition. The unavoidable liens total \$149,103.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which she exempted \$1000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

17. [13-24339](#)-B-7 KAI/STEPHANIE BRESSER MOTION FOR COMPENSATION BY THE
PA-8 LAW OFFICE OF PINO AND
ASSOCIATES FOR ESTELA O. PINO,
TRUSTEE'S ATTORNEY(S)
4-22-14 [[50](#)]

Tentative 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 \$19,595.00 in fees and \$1455.58 in costs, for a total of \$21,050.58 in fees and costs, for the period May 12, 2014, through April 22, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on October 3, 2013 (Dkt. 33), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case. The applicant now seeks compensation for services rendered and costs incurred during the period May 8, 2013, through and including April 22, 2014. However, the order approving the applicant's employment did not specify an effective date of employment, and therefore the applicant's employment was effective on the date of the entry of the order, October 3, 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 May 8, 2013. The request for that effective date is granted in part. 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, there being now showing of exceptional circumstances justifying an effective date of employment of May 8, 2013, which is 34 days before the date that the employment application was filed, the court grants an effective date of employment of May 12, 2013.

Although the applicant's effective date of employment is after the first date that the applicant started rendering services, the court does not reduce the total amount of the fee requested, as the court acknowledges the voluntary reduction of \$1,860.00 in fees, as set forth in the notice filed by the applicant on May 7, 2014 (Dkt. 56). As the applicant incurred fees of \$482.50 and costs of \$4.00 prior to May 12, 2014, the voluntary reduction in fees offsets amount that would be disallowed for pre-effective date services in the absence of a voluntary reduction.

As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The applicant shall submit an amended order approving the applicant's employment which is identical to the order entered October 3, 2013, but which specifies an effective date of employment of May 12, 2013. Following entry of the amended employment order, the court will issue a minute order granting the application.

18. [14-20059](#)-B-7 ALFREDO HOLGUIN OBJECTION TO DEBTOR'S CLAIM OF
PA-3 EXEMPTIONS
4-10-14 [[35](#)]

Tentative Ruling: The parties shall appear at the hearing prepared to discuss (1) a discovery schedule and (2) a continued hearing date.

19. [14-20059](#)-B-7 ALFREDO HOLGUIN MOTION TO EXTEND DEADLINE TO
PA-4 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-14-14 [[40](#)]

Tentative Ruling: The debtor's opposition is overruled. The motion is granted. Pursuant to F. R. Bankr. P. 4004(b), the deadline for the chapter 7 trustee to commence an action against the debtor under 11 U.S.C. § 727 is extended to and including June 13, 2014. Except as so

ordered, the motion is denied.

The legal standard for obtaining an extension of the deadline to file a complaint objecting to a debtor's discharge is as follows:

The moving party has the burden of proof to show cause to extend the time for matters relating to the debtor's discharge. See In re Stonham, 317 B.R. 544, 547 (Bankr.D.Colo.2004) (interpreting the "for cause" exception in Rule 4007(c) which limits the time to file a dischargeability complaint). The same standard has been applied to motions for additional time under Rule 1017(e)(1). [In re Molitor, 395 B.R. 197, 205 (Bankr.S.D.Ga.2008)]. The movant's burden of proof cannot be "satisfied with only a scintilla of evidence." Stonham, 317 B.R. at 547. The movant seeking an extension of time for cause must "establish at least a reasonable degree of due diligence to be accorded the requested extension." Molitor, 395 B.R. at 205 (citing Stonham, 317 B.R. at 547).

The power to extend the 60-day deadlines prescribed in the Rules "rests entirely within the discretion of the bankruptcy judge and should not be granted without a showing of good cause, and without proof that the creditor acted diligently to obtain facts within the bar date ... but was unable to do so." In re Farhid, 171 B.R. 94, 96, (N.D.Cal.1994) (citation omitted). The power is to be exercised cautiously and not where lack of diligence by the creditor appears. Id. at 97 (citations omitted).

In re Bomarito, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011).

In this case, the court finds that the trustee has acted diligently to obtain facts regarding the debtor's disclosure of his assets before the expiration of the initial deadline. The court has reviewed the information requested of the debtor by the trustee as set forth in the trustee's reply (Dkt. 64 at 2-3) and does not find the requests to be unreasonable; indeed, all of the requests are clearly designed to ascertain a picture of the debtor's assets as of the date of the filing of the petition to allow the trustee to determine whether there are assets which can be administered or need further investigation. The debtor does not dispute that he has not provided all of the requested information to the trustee. Instead, the debtor's opposition focuses on his assertion that the trustee's requests for information were prompted by an allegedly unreliable creditor. However, the court finds the trustee's requests for information to be reasonable regardless of the event which triggered the investigation. Considering that nearly 45 days of the time period in which to commence an action under 11 U.S.C. § 727 was consumed with the trustee's attempts to employ counsel, which were opposed by the debtor, and the relatively short extension of the deadline requested by the trustee, the court exercises its discretion to grant the motion and extend the deadline.

The court will issue a minute order.

20. [13-33397](#)-B-7 BERNADETTE MOTION FOR ENTRY OF DEFAULT
[13-2361](#) LIABEUF-ROSENTHAL SNM-3 JUDGMENT
LIABEUF-ROSENTHAL V. KEYBANK 4-14-14 [[34](#)]
NATIONAL ASSOCIATION

Tentative Ruling: The motion is dismissed.

The motion is moot. The motion is plaintiff Bernadette Anne Liabeuf-Rosenthal (the "Plaintiff")'s request for entry of defendant KeyBank, N.A. (the "Defendant")'s default in the above-captioned adversary proceeding. The motion is moot because the Plaintiff has submitted a subsequent request for entry of default in the proper form (Dkt. 45) and the clerk of the court has entered the default of the Defendant on May 14, 2014 (Dkt. 47). Therefore, the Plaintiff has the relief she seeks through this motion.

If the motion were not dismissed as moot, it would be denied because it is a procedurally improper attempt by the Plaintiff to obtain entry of the Defendant's default. "The entry of default must be distinguished from a default judgment. Rule 55 requires a two-step process. The first step, entry of default, is a ministerial matter performed by the clerk and is a prerequisite to a later default judgment." Moore's Federal Practice ¶ 55.10[1] (3rd ed. 2014), citing Shepard Claims Serv., Inc. v. William Darrah & Assocs., 796 F.2d 190, 193 (6th Cir. 1986) ("...entry of default is just the first procedural step on the road to obtaining a default judgment...") (emphasis added). Thus, Rule 55 requires that the Plaintiff apply to the clerk of the court, not to the court via a noticed motion, for entry of the Defendant's default.

The motion does not request entry of default judgment against the Defendant and therefore cannot be treated as such a request. Fed. R. Bankr. P. 7054, incorporating Fed. R. Civ. P. 54(c).

The court will issue a minute order.

21. [13-25643](#)-B-7 TODD/CHRISTINE DUPONT CONTINUED MOTION TO COMPEL
MDA-2 ABANDONMENT
4-8-14 [[51](#)]

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.

22. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-606

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF GALANT AND
COPENHAVER, INC. FOR KAYLA M.
GRANT, DEBTORS' ATTORNEY(S)
4-17-14 [[674](#)]

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

The motion is granted to the extent set forth herein. The application is approved on a final basis in the amount of \$13,230.00 in fees and \$241.38 in expenses, for a total of \$13,471.38, for the period of July 26, 2013, through and including March 25, 2014. Additionally, \$18,383.29 in previously approved interim awards is approved on a final basis. The debtors are authorized to pay the total final award as a chapter 11 administrative expense pursuant to the terms of the confirmed chapter 11 plan (Dkt. 597). Except as so ordered, the motion is denied.

On March 15, 2013, the debtors filed a chapter 11 petition. By order entered on August 13, 2013 (Dkt. 442), the court authorized employment of the applicant as general bankruptcy counsel for the debtors. By amended order entered September 27, 2013 (Dkt. 519), the court approved an effective date of employment for the applicant of April 3, 2013. The applicant now seeks final approval of the fees and expenses set forth above. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

23. [14-21861](#)-B-7 BRYAN/ANDREA KAUFFROATH
WRF-1

CONTINUED MOTION TO COMPEL
ABANDONMENT
3-24-14 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is continued to June 3, 2014, at 9:32 a.m.

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

The court will issue a minute order.

24. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC MOTION TO CLOSE CHAPTER 11 CASE
FWP-107 5-6-14 [[2532](#)]

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.

25. [14-21164](#)-B-7 JOHN MARTIN AND PHEBE MOTION TO AVOID LIEN OF AUBURN
LBG-1 SAGUAN-MARTIN PLAZA, LLC
4-11-14 [[13](#)]

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 Auburn Plaza, LLC, recorded in the official records of Placer County, Doc. No. 2013-0091852-00, is avoided as against the real property located at 21255 Meadow Oaks Lane, Colfax, CA 95713 (the "Property").

The Property had a value of \$342,059.00 as of the date of the petition. The unavoidable liens total approximately \$633,485.03. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

26. [14-21164](#)-B-7 JOHN MARTIN AND PHEBE MOTION TO AVOID LIEN OF SIERRA
LBG-2 SAGUAN-MARTIN CENTRAL CREDIT UNION
4-11-14 [[18](#)]

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 Sierra Central Credit Union, recorded in the official records of Placer County, Doc. No. 2013-0087288-00, is avoided as against the real property located at 21255 Meadow Oaks Lane, Colfax, CA 95713 (the "Property").

The Property had a value of \$342,059.00 as of the date of the petition. The unavoidable liens total approximately \$633,485.03. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

27. [11-36068](#)-B-7 WILTZE/THERESA FIGUEROA MOTION TO AVOID LIEN OF
JAD-1 DISCOVER BANK
5-1-14 [[29](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The debtors seek an order avoiding a judicial lien held by Discover Bank to the extent it impairs a claim of exemption to which they would be entitled in their real property located at 705 William Moss Boulevard, Stockton, CA 95206 (the "Property"). To avoid a judicial lien pursuant to 11 U.S.C. § 522(f), the debtors must show the following:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a non-possessory, non-purchase money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

Here, the debtors have not claimed the Property as exempt as is required under 11 U.S.C. § 522(f) and In re Mohring. Although the debtors assert in the motion that the claimed exemption for the Property is \$5,000.00, their most recent Schedule C filed September 15, 2011 (Dkt. 20, p.8-9) reveals no such claim of exemption. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

28. [14-24074](#)-B-7 PAUL/CYNTHIA HANSCOM
FF-1

MOTION TO COMPEL ABANDONMENT
4-25-14 [[7](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is continued to July 1, 2014, at 9:32 a.m.

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

The court will issue a minute order.

29. [14-22277](#)-B-7 CURTIS WAHL
DBJ-1

MOTION TO AVOID LIEN OF MAIN
STREET ACQUISITION CORP.
4-22-14 [[14](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Main Street Acquisition Corporation, recorded in the official records of Butte County, Doc. No. 2012-0033969, is avoided as against the real property located at 2732 San Jose Street, Chico, CA 95973 (the "Property").

The Property had a value of \$180,000.00 as of the date of the petition. The unavoidable liens total approximately \$139,000.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which he exempted \$41,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

30. [11-29591](#)-B-13 BRIAN SAECHAO
[13-2368](#) PLC-1
SAECHAO V. FEDERAL NATIONAL
MORTGAGE ASSOCIATION ET AL

MOTION TO APPROVE SETTLEMENT
AGREEMENT AND RELEASE
4-10-14 [[24](#)]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because it was not properly noticed to all interested parties as is required by Federal Rule of Bankruptcy Procedure 2002(a). Notice of a motion to approve a compromise or settlement agreement under Federal Rule of Bankruptcy Procedure 9019 must be provided to all interested parties as required by Federal Rule of Bankruptcy Procedure 2002(a)(3). Fed. R. Bankr. P. 9019(a). Federal Rule of Bankruptcy Procedure 2002(a)(3) requires that all interested parties be provided no less than twenty-one (21) days' notice of the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Federal Rule of Bankruptcy Procedure 4001(d). Fed. R. Bankr. P. 2002(a)(3). Here, according to the proof of service filed April 10, 2014 (Dkt. 30), the United States Trustee was served electronically with the motion, amended notice of hearing, and supporting documents. The only other party served was Merdaud Jafarnia, counsel for the defendants in this adversary proceeding. As such, the plaintiff has failed to comply with the noticing requirements of Federal Rule of Bankruptcy Procedure 2002(a)(3), and the motion is denied without prejudice.

The procedural problems appear to arise from the mistaken belief that the motion is properly a motion in the adversary proceeding. It is not. This motion should have been filed in the plaintiff's parent bankruptcy case rather than in the adversary proceeding. If the plaintiff wishes to have the court consider approval of the settlement agreement, then he is instructed to file a properly filed and noticed motion in the bankruptcy case for approval of the settlement agreement and set it for hearing on a chapter 13 calendar.

The court will issue a minute order.

31. [13-22892](#)-B-7 SERGIO ZUCCALA
HLG-5

MOTION TO ABANDON
4-25-14 [[82](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is continued to June 3, 2014, at 9:32 a.m.

As the property for which the debtor seeks abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1) has expired.

The court will issue a minute order.

32. [13-26640](#)-B-7 DONNA/HARVEY BILLS MOTION FOR COMPENSATION FOR
HSM-7 RYAN, CHRISTIE, QUINN AND HORN,
ACCOUNTANT(S)
4-21-14 [[109](#)]

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 total amount of \$2,155.00, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on February 25, 2014 (Dkt. 108), the court authorized the chapter 7 trustee to retain Ryan, Christie, Quinn & Horn ("RCQH") as accountants for the trustee in this case, with an effective date of employment of January 31, 2014. The trustee now seeks compensation for services rendered and costs incurred by RCQH during the period of January 31, 2014, through and including May 20, 2014. 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.

33. [13-26640](#)-B-7 DONNA/HARVEY BILLS MOTION FOR COMPENSATION BY THE
HSM-8 LAW OFFICE OF HEFNER, STARK AND
MAROIS, LLP FOR AARON A. AVERY,
TRUSTEE'S ATTORNEY(S)
4-21-14 [[115](#)]

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 \$18,438.75 in fees and \$1,719.70 in expenses, for a total of \$20,158.45, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on July 25, 2013 (Dkt. 32), the court authorized the chapter 7 trustee to retain the applicant as general bankruptcy counsel in this case. The applicant's employment was effective June 27, 2013. The applicant now seeks compensation for services rendered and costs incurred during the period of June 27, 2013, through and including May 20, 2014. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

34. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON MOTION TO RECONSIDER
MLA-3 4-30-14 [[145](#)]

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

The motion is removed from the calendar. The debtor withdrew the motion on May 16, 2014 (Dkt. 151).

35. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON CONTINUED MOTION FOR THE
UST-2 COURT'S DETERMINATION OF THE
REASONABLE VALUE OF THE
SERVICES OF JEFFERY YAZEL, ESQ.
2-28-14 [[107](#)]

Tentative Ruling: This matter is continued to July 1, 2014, at 9:32 a.m.

This matter was continued from April 8, 2014, by order entered April 11, 2014 (Dkt. 132) (the "Order"), which required respondent Jeffery Yazel ("Mr. Yazel") to file, notice, and set for hearing on today's calendar a separate motion for allowance of compensation of fees and expenses that complies with all requirements for such motions including, without limitation, Federal Rule of Bankruptcy Procedure 2002(a)(6).

The court finds that Mr. Yazel has failed to comply with the Order. Although Mr. Yazel did file a motion for compensation on April 17, 2014 (Dkt. 135) (the "Compensation Motion"), he did so on an ex parte basis in contravention of the Order's specific request that he set the matter for hearing on today's calendar so that the court could resolve the Compensation Motion and the instant motion at the same time. Mr. Yazel is now instructed to properly notice and set the Compensation Motion for hearing on July 1, 2014, at 9:32 a.m. while complying with all requirements for such requests including, without limitation, Federal Rule of Bankruptcy Procedure 2002(a)(6) and Local Bankruptcy Rule 9014-1.

The court will issue a minute order.

36. [12-33980](#)-B-7 LARRY WALLER MOTION FOR COMPENSATION BY THE
HSM-13 LAW OFFICE OF HEFFNER, STARK &
MAROIS, LLP FOR AARON A. AVERY,
TRUSTEE'S ATTORNEY(S)
4-23-14 [[151](#)]

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.

37. [11-45386](#)-B-7 RONALD/LISA HOWARD
DRE-3

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS
4-22-14 [[45](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of American Express, recorded in the official records of Placer County, Doc. No. 2011-0036019-00, is avoided as against the real property located at 4040 Hunters Drive, Loomis, CA 95650 (the "Property").

The Property had a value of \$165,000.00 as of the date of the petition. The unavoidable liens total approximately \$300,200.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

38. [14-22792](#)-B-7 ROBERT/PATTI MORI
RAC-1

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
4-22-14 [[9](#)]

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

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of American Express Bank, FSB, recorded in the official records of San Joaquin County, Doc. No. 2013-135941, is avoided as against the real property located at 109 West Lockeford Street, Lodi, CA 95240 (the "Property").

The Property had a value of \$135,000.00 as of the date of the petition. The unavoidable liens total approximately \$16,951.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.950, under which they exempted \$118,049.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

39. [13-31040](#)-B-11 JIMMY ALEXANDER
PRE-1
MOTION TO USE CASH COLLATERAL
AND/OR MOTION FOR ADEQUATE
PROTECTION , MOTION TO SCHEDULE
A FINAL HEARING
5-6-14 [[148](#)]

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.

40. [14-24935](#)-B-7 DARA PETROLEUM, INC.
BHR-2
MOTION TO DISMISS CASE, EXCUSE
RECEIVER'S TURNOVER, AND/OR
RELIEF FOR RELIEF FROM
AUTOMATIC STAY O.S.T.
5-13-14 [[8](#)]

HSBC BANK USA, N.A. VS.

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.