**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**November 5, 2018 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar: 6.

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions or objects to the tentative ruling. If you wish to oppose the motion or otherwise be heard, please so advise Judge McManus. Please do not identify yourself or explain the nature of your opposition. If anyone wishes to be heard, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion or object to the proposed 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 DECEMBER 3, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 19, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 26, 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. 18-26533-A-7 HAR-AGAM, L.L.C. ORDER TO SHOW CAUSE 10-19-18 [13]

**Tentative Ruling:** The petition will be dismissed.

The debtor did not pay its petition filing fee, as required by Fed. R. Bankr. P. 1006(a), and it does not qualify to apply to pay the fee in installments, as it is a limited liability company and not an individual. The filing fee of $335 was due on October 18, 2018 and has not been paid yet. See Docket 9.

2. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO OBJECTION TO CLAIM
DRE-5
VS. HUI-MING CHANG 9-13-18 [147]

**Tentative Ruling:** The objection will be sustained.

The debtor, with the permission of the court, objects to the $38 million unsecured proof of claim of claimant Hui-Ming Chang, arguing that the claim arose post-petition and it is not subject to the administration of this bankruptcy estate. POC 1.

The debtor has overcome the presumptive validity of the claim, given that he asserted ownership interest in the property post-petition. Mr. Chang however has not established that his claim arose pre-petition. Conversely, Mr. Chang's claim arose post-petition. It is not subject to discharge and to administration in this bankruptcy estate.

The debtors filed this chapter 7 case on December 17, 2010. The trustee issued a report of no distribution on February 7, 2011. The court entered the debtors' discharge on March 28, 2011. The case was closed on April 1, 2011.

On July 28, 2016, the debtors requested that the case be reopened in order to list an asset on Schedule B and exempt it on Schedule C. Dockets 27 & 28. The case was reopened on July 28, 2016. Docket 30. The new asset was described as "[p]otential inheritance in Taiwan property." Docket 60, Amended Schedules B and C filed October 28, 2016. The debtors exempted $20,000 of the inheritance pursuant to Cal. Civ. Pro. Code § 703.140(b)(5). Id. The court appointed a chapter 7 trustee on October 26, 2016. Dockets 53 & 58. The trustee issued a notice of assets on November 29, 2016. The claims bar date was March 2, 2017. Docket 61.

Only two proofs of claim have been filed. Hui-ming Chang (Mr. Chang) filed a proof of claim for $38 million on February 24, 2017. POC 1-1. The Golden 1 Credit Union filed a proof of claim for $14,500. POC 2-1.

Mr. Chang's claim involves a dispute over a real property in Taiwan. Ke De-sheng, the father of debtor Momotaka Saiyo, passed away in September 1999. Ke-Chen Xing-jia, the wife of Ke De-sheng and mother of the debtor and his two siblings, a brother and sister, sold an interest in an unfinished luxury condo development in Taiwan to Mr. Chang. In May 2009 and September 2010, Ke-Chen Xing-jia entered into agreements with the claimant Mr. Chang for the sale of the real property. Based on these agreements, Mr. Chang paid substantial taxes and liens against the property. The debtor and his siblings have asserted an ownership interest in the property despite the sale.

The debtor contends that he was unaware that his mother's conduct until late 2011 when the local prosecutor in Taiwan charged her with tax evasion. Dockets 92 & 149. The debtor appointed his brother, Ko Fu-Yuan, in September 2011 to act on his behalf in connection with improprieties relating to the transfer of the property from his mother to Mr. Chang. The debtor and his siblings challenged the transfer to Mr. Chang in January 2012, when they sought an injunction against the transfer with a court in Taiwan. Docket 149; Docket 160 at 5-6.

During this time, Mr. Chang began paying debts associated with the property. He complains that the debtor's challenges to his interest in the property surfaced only after he paid approximately $38 million to satisfy tax liabilities and a mortgage on the property.

In November 2010, Mr. Chang paid approximately $10.2 million to the tax authorities in Taiwan, to satisfy liens arising from inheritance taxes on which the debtor and other family members were liable. Post-petition, in approximately June 2011, Mr. Chang paid approximately $20.3 million to satisfy a mortgage on the property.

Mr. Chang appears to have made the remainder of the $38 million in payments associated with the property in or after June 2011. See POC 1-1, Amended District Court Complaint at 5. While the record contains a ledger of payments, the date for each payment is not given and some of the payments are not adequately explained. The court is told in narratives when the $10.2 million and $20.3 million payments were made, but the other payments are undated. The ledger also fails to explain, for example, payments identified as "[c]ompulsory enforcement - [p]ayment of price." Docket 162 Ex. 8.

Mr. Chang's $38 million claim is based solely on his payment of debts associated with the property. According to Mr. Chang, if he prevails against the debtor's assertion of an interest in the property, he would have no claim against the debtor or the estate. Docket 135 at 5:00-9:00. The claim is wholly contingent on the debtor prevailing on his claim to the property.

Most recently, the debtor's challenge of Mr. Chang's ownership interest in the property was dismissed by a trial court in Taiwan. The debtor is appealing the dismissal of his case. Docket 135, Hearing on Motion to Sell.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

"*Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.*"

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

11 U.S.C. § 727(b) provides: "*Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.*"

A chapter 7 discharge then discharges a debtor from personal liability for "*all debts that arose before the date of the order for relief under this chapter . . . whether or not a proof of claim based on any such debt or liability is filed . . . and whether or not a claim based on any such debt or liability is allowed.*" 11 U.S.C. § 727(b).

A "debt" is defined as "liability on a claim." 11 U.S.C. § 101(12). In turn, a pre-petition "claim" is broadly defined as "*(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.*" 11 U.S.C. § 101(5).

The Ninth Circuit has identified the above definition as the "broadest possible definition" of claim. "This 'broadest possible definition' of 'claim' is designed to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" California Dept. of Health Servs. v. Jensen (In re Jensen), 995 F.2d 925, 929-30 (9th Cir. 1993) (citing to H.R.Rep. No. 595, 95th Cong., 2d Sess. 1, 309 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6266; S.Rep. No. 598, 95th Cong., 2d Sess. 1, 22, reprinted in 1978 U.S.C.C.A.N. 5787, 5808).

The broad definition of a claim in the Bankruptcy Code is not boundless, however. In Jensen, the Ninth Circuit analyzed four different tests for determining when a claim arises, pre or post-petition:

(1) the claim arises when the right to payment accrues,

(2) the claim arises when a relationship is established between the debtor and the creditor, *i.e.*, the earliest point in the relationship between the debtor and the creditor,

(3) the claim arises at the time of the debtor's conduct, or

(4) the claim arises from damages that can be fairly contemplated by the parties at the time of the debtor's bankruptcy.

Jensen at 928-31.

Jensen rejected the right to payment test as overly narrow and rejected the relationship test as overly broad.

In commenting on the interplay between the latter two tests, Jensen noted that "*nothing in the legislative history or the Code suggests that Congress intended to discharge a creditor's rights before the creditor knew or should have known that its rights existed.*" Jensen at 930. "*[A]lthough it is generally true that 'claims in bankruptcy arise from the debtor's conduct,' Zelis, 66 F.3d at 209, the common thread running through the case law is that the Code does not suggest that a creditor's claim is to be discharged if the parties could not reasonably contemplate the existence of that claim prior to the reorganization.*" Hexcel Corp. v. Stepan Co. (In re Hexcel Corp.), 239 B.R. 564, 570 (N.D. Cal. 1999).

"*This holding is not at odds with the basic notion that a claim in bankruptcy stems from the debtor's conduct. See In re Zelis, 66 F.3d 205, 209 (9th Cir.1995). Clearly, the preliminary task for the bankruptcy court is to ask when the conduct giving rise to the claim occurred—the claim may not be discharged if the conduct did not occur pre-petition. The import of this ruling is simply that even if a claim stems from pre-petition conduct, it still may not be discharged if the parties could not fairly contemplate its potential existence during the bankruptcy proceedings. This conclusion is compelled by the Bankruptcy Code and the case law, and is bolstered by the potential constitutional problems that could arise from a contrary result.*"

Hexcel at 572.

"*What might be called the 'fair contemplation' test provides that 'all future response and natural resource damages cost based on pre-petition conduct that can be fairly contemplated by the parties at the time of [d]ebtors' bankruptcy are claims under the [Bankruptcy] Code.'*"

Jensen at 930.

This court is concerned that the discharge of claims that could not have been fairly contemplated on the petition date would rob creditors of their claims against the debtor, without notice, in violation of the Fifth Amendment's due process clause. See Hexcel at 570-71. Due process would be a serious issue in this case but for the unique position of the claimant Mr. Chang, seeking to have his claim included in this case.

The central question here is whether the parties could have fairly contemplated on the petition date the future assertion of an interest in the property by the debtor (based on his mother's transfer of the property to Mr. Chang pre-petition).

The debtor has offered sufficient evidence to rebut the presumptive validity of Mr. Chang's claim. The debtor asserted an interest in the property post-petition. This is sufficient to rebut the presumptive validity, *i.e.*, pre-petition nature of the claim. However, Mr. Chang has not carried his ultimate burden of persuasion to establish that his claim arose pre-petition. The court does not have sufficient evidence that the parties could have fairly contemplated as of the petition date the debtor's post-petition assertion of interest in the property. More, the evidence establishes that Mr. Chang's claim arose post-petition and it is not subject to the discharge and administration of this estate.

The contracts for the purchase of the property and Mr. Chang's agreement for the payment of taxes associated with the property were entered into pre-petition. According to the attachments to the proof of claim, the contracts for the purchase of the property were entered into in May 2009 and September 2010, before this case was filed on December 17, 2010. POC 1-1, Amended District Court Complaint at 3-4.

The debtor is not a party to the contracts between his mother and Mr. Chang. Docket 135 at 5:00 - 9:00. Nevertheless, the debtor knew of the purchase and cooperated with Mr. Chang's satisfaction of the purchase agreement. With the consent of the debtor and his siblings, Mr. Chang paid $10.2 million in November 2010, to satisfy inheritance tax liens against the property, on which taxes the debtor and his siblings were liable.

"*Mr. Saiyo executed and filed a declaration in a legal proceeding with the National Tax Administration in Taiwan that provided the governmental entity a 'Consent of Payment by All Beneficiaries' which gave [Mr. Chang], a third party, the right to pay the delinquent estate taxes, duties and fines on behalf of Mr. Saiyo and all other family members who were held to be responsible by the National Tax Administration for such debts.*"

POC 1-1, Amended District Court Complaint at 4.

"*The unpaid inheritance taxes encumbered the Taiwan Property, due to the lien put in place by the Taipei Tax Administration for the unpaid estate taxes, duties and fines levied against the Taiwan Property. The Taiwan Property was also subject to other encumbrances.*"

Docket 161 at 2.

In other words, the debtor was aware as of the petition date that Mr. Chang was purchasing the property, but he did not assert an interest in the property. The debtor did not assert an interest in the property because he did not believe to own an interest in the property. The debtor asserted an interest in the property post-petition, in January 2012, because he did not know of his mother's alleged fraudulent conduct involving the transfer of the property until late 2011.

This is consistent with the debtor's denial of ownership interest in the property in 2005 before the Taiwanese tax authorities. It is also consistent with the debtor not being a party to the agreements involving the sale of the property to Mr. Chang. If he knew that he owned an interest in the property as of the petition date, he would have asserted such an interest and become involved in the sale to Mr. Chang.

The benefit the debtor received from filing bankruptcy and receiving a discharge was negligible when compared to the millions of dollars he would have reaped if he were to assert an interest in the property in connection with its sale to Mr. Chang. Upon filing for bankruptcy, the debtor had a home in Grass Valley, California with a value of approximately $395,000, encumbered by mortgages totaling $628,000. His personal property items had a value of approximately $23,011. He listed no unsecured claims and the only secured claims listed were his two mortgages and a $13,497.19 claim secured by his Ford Taurus vehicle. Docket 1, Schedules A, B, D, E, F, G, H. The court doubts this case would have been filed if the debtor appreciated he held a claim against the claimant before this case was filed.

Further, between 1987 and December 2010, when he filed for bankruptcy, the debtor had been continuously residing in the United States. Docket 92 at 2. He had not even visited Taiwan during this time. These facts are not consistent with the debtor knowing of an ownership interest in the property as of the petition date.

The court rejects Mr. Chang's attempt at redefining the conduct that gave rise to his claim as pre-petition fraudulent misrepresentations by the debtor that he does not own an interest in the property, inducing Mr. Chang to rely on such representations and pay the $38 million debt on the property.

Mr. Chang has presented no evidence that the debtor ever made such representations to him in connection with the transfer of the property. The debtor is not even a party to the agreements involving the sale of the property to Mr. Chang. While the debtor apparently argued he owned no interest in the property through an agent in Taiwan, this was in connection with him disputing liability on the inheritance taxes. It took place in 2005 and it did not involve Mr. Chang. It involved an inheritance tax case before the Taiwanese tax authorities. Docket 161 at 3.

Moreover, Mr. Chang's proof of claim is not based on fraud. It does not even refer to fraud. It is based solely on him paying debts associated with the property. POC 1. He has admitted that if he defeats the debtor's claimed interest in the property, he would have no claim against the debtor or the estate. Docket 135 at 5:00-9:00. The bankruptcy estate has no desire to prosecute the debtor's claim against the property either. Mr. Chang's claim then is wholly contingent on the debtor prevailing on his assertion of an interest against the property.

The conduct that has given rise to Mr. Chang's contingent claim then is the debtor's assertion of an ownership interest in the property. The debtor asserted an interest in the property post-petition. He asserted an interest in the property in January 2012, after this case was filed in December 2010 and after the March 28, 2011 discharge of the debtor.

The court has nothing in the record suggesting that the debtor knew of his interest in the property on the petition date. The reopening the case in 2016 to disclose his interest in the property is not inconsistent. Just because a debtor does not know of a property right on the petition date does not mean that the property right does not belong to the bankruptcy estate and the debtor should not reopen the case to disclose it when he eventually learns of it.

Nor does reopening the case to disclose a previously unknown asset somehow fail the fair contemplation test. The test focuses on what the parties knew and could have contemplated as of the petition date. It is a snap shot in time.

Mr. Chang himself also admits that he could not have contemplated as of the petition date the post-petition assertion of interest in the property by the debtor. "*Mr. Chang had no way of knowing that one month after he deposited the Guarantee [the $10.2 million payment with the tax authorities], Mr. Saiyo would file a chapter 7 bankruptcy petition, or that in September 2011 – less than six months after receiving his discharge – Mr. Saiyo would execute the 2011 Power of Attorney, appointing his brother as his agent to pursue his purported (and previously undisclosed) claims with respect to the Taiwan Property.*" Docket 160 at 9.

Mr. Chang has not carried his burden of persuasion to establish that his claim

arose pre-petition. This is sufficient to sustain the objection to the claim.

The record also establishes that Mr. Chang's claim arose post-petition and it is not subject to the discharge and administration of this estate. The evidence establishes that neither the debtor nor Mr. Chang could have contemplated, much less fairly contemplated that the debtor would assert an interest in the property post-petition.

Incidentally, as the conduct giving rise to the claim occurred post-petition, *i.e.*, the debtor asserted an interest in the property post-petition, the conduct test — if applicable here — also establishes that the claim arose post-petition.

The objection will be sustained.

Finally, if Mr. Chang's claim arose pre-petition, the court estimates the claim under 11 U.S.C. § 502(c) at a value of $0.00.

11 U.S.C. § 502(c)(1) provides that "*[t]here shall be estimated for purpose of allowance under this section— (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.*"

If a claim is highly speculative and its otherwise liquidation would cause an undue delay on the administration of the bankruptcy estate, bankruptcy courts have broad discretion to estimate the value of the claim. In re Corey, 892 F.2d 829, 834 (9th Cir. 1989).

"A judge who is estimating a claim pursuant to 11 U.S.C. § 502(c) can use whatever method is best suited through the particular contingencies at issue." In re Dennis Ponte, Inc., 61 B.R. 296, 300 (B.A.P. 9th Cir. 1986) (quoting Bittner v. Borne Chem. Co., Inc., 691 F.2d 134 (3d Cir. 1982)).

Courts often follow "substantive law governing the nature of the claim (such as following contract law when estimating a breach of contract claim)." In re PG&E, 295 B.R. 635, 642 (Bankr. N.D. Cal. 2003) (citing Bittner, 691 F.2d at 135-136).

"*Although the bankruptcy court is bound by the legal rules that govern the ultimate value of the claim (e.g., the court should estimate the worth of a claim based on an alleged breach of contract in accordance with accepted contract law), there are no congressionally mandated limitations on the court's authority to estimate claims.*" 4 Collier on Bankruptcy § 502.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

"The purpose of allowing the estimation of claims is to avoid undue delay in the administration of the case."

In re Porter, 50 B.R. 510, 517 (Bankr. E.D. Va. 1985).

If it is a pre-petition claim, the court estimates the value of Mr. Chang's claim at $0.00. The claim is contingent on the debtor prevailing on his assertion of ownership interest in the property. As noted above, Mr. Chang's claim is based solely on him paying debt associated with the property. He has admitted that if he prevails against the debtor's assertion of an interest in the property, he would have no claim against the debtor or the estate. Docket 135 at 5:00-9:00. His claim then is wholly contingent on the debtor prevailing

on his assertion of an interest against the property.

The contingency on the claim has failed, however. The debtor has lost on his claim against the property. Mr. Chang has prevailed in a Taiwanese trial court against the debtor's assertion of an interest in the property. And, while the debtor is attempting to appeal the trial court's decision, the debtor has admitted to not having the funds to prosecute the appeal.

Accordingly, for purposes of administering this bankruptcy estate, Mr. Chang's claim is estimated at $0.00.

3. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — MOTION TO SELL
BHS-2 — 6-5-18 [86]

**Tentative Ruling:** The motion will be denied.

The chapter 7 trustee requests authority to sell for $50,000 the estate's interest in any and all claims by the debtors to an inheritance of a real property located in Taiwan to Hui-ming Chang. As further consideration for receiving interest in the claims, the buyer has agreed to withdraw his $38 million proof of claim against the estate.

Given that the court is sustaining the objection to Hui-Ming Chang's proof of claim and the debtor is paying all other claims in the case, this motion will be denied. It is moot. Mr. Chang is no longer a creditor of the estate. The trustee does not need him to release his claim any longer. The trustee no longer needs any funds to pay creditors. Accordingly, the motion will be denied.

4. 17-22851-A-7 ABDUL/TAHMINA RAUF — MOTION FOR RELIEF FROM AUTOMATIC STAY
CALIFORNIA BANK & TRUST VS. — 9-28-18 [73]

**Tentative Ruling:** The motion will be conditionally denied.

The movant, California Bank & Trust, seeks relief from the automatic stay as to a real property in Sacramento, California. According to the movant, the property has a value between $339,000 and $355,000 (scheduled value is $253,000) and it is encumbered by claims totaling approximately $459,754.75.

The movant's deed is in first priority position and secures a claim of approximately $219,766. The other two claims against the property include a judicial lien for $133,260.81 held by Stohlman & Rogers, Inc., dba Lakeview Petroleum Company (per proof of claim) and a tax lien for $106,727.94 held by the IRS (per proof of claim).

The trustee opposes the motion, seeking time to market and sell the property. Stohlman & Rogers, Inc., dba Lakeview Petroleum Company also opposes the motion. The movant replies that the court must grant the motion because there is no equity in it and section 362(d)(2) is satisfied.

The court is concerned that the trustee is not administering this property in a timely fashion. The case has been pending since April 27, 2017. While the trustee issued a report of no distribution on May 31, 2017, he amended that report to a notice of assets on August 22, 2017. Docket 31.

Yet, the trustee wants to start marketing the property for sale now. He filed a motion to employ the estate's real estate broker only on October 17, 2018, after this motion was filed. Docket 79. He says "[he] will seek a reduction in the junior liens to allow the sale to move forward and prove the estate funds from a sale." Docket 88 at 2.

The trustee does not explain why he has waited over 14 months to administer the subject property. Before allowing more time for the trustee to administer the property, the court also needs to know what benefit the trustee expects from the sale of the property. The court has no information on the status of the negotiations with the junior secured creditors.

5. 18-25853-A-7 BRANDON/MICHELLE BERDAHL — MOTION TO AVOID JUDICIAL LIEN
JCK-1
VS. FIRESIDE BANK
9-21-18 [9]

**Tentative Ruling:** The motion will be denied.

A judgment was entered against debtor Michelle Berdahl (under the name Michelle Rodriques) in favor of Fireside Bank for the sum of $9,162.96 on March 22, 2007. The abstract of judgment was recorded with San Joaquin County on April 24, 2007. That lien attached to the debtor's interest in a residential real property in Stockton, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f)(1)(A).

The motion will be denied. The motion does not establish the enforceability of the judgment underlying the lien. The lien is based on a March 22, 2007 judgment.

However, the lien was extinguished on March 22, 2017, before this case was even filed on September 17, 2018, under Cal. Civ. Pro. Code § 683.020, which provides that "*[e]xcept as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) [a]ny lien created by an enforcement procedure pursuant to the judgment is extinguished.*"

And, there is no renewal of judgment by Fireside Bank in the record. Accordingly, the motion will be denied.

6. 16-22654-A-7 MARC LIM — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HSM-18
10-15-18 [228]

**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.

Hefner, Stark & Marois, attorney for the trustee, has filed its second and final motion for approval of compensation. The court approved the movant's first interim compensation of $110,819.50 in fees (excluding a voluntary reduction of $5,000) and $3,174 in expenses, for a total of $113,993.50, on October 25, 2017. Docket 211.

The requested compensation for the second interim period consists of $16,832 in fees and $142 in expenses, for a total of $16,974. This motion covers the period from September 1, 2017 through November 5, 2018. The court approved the movant's employment as the trustee's attorney on June 9, 2016. In performing its services, the movant charged hourly rates of $320, $340, $400, and $420.

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) analyzing issues and advising the trustee about a delay in the closing of the sale of the Elk Grove property (such as opening of a security safe on the property),

(2) reviewing events in the probate proceeding,

(3) reviewing and analyzing litigation and potential agreements between the debtor's heirs and some of his creditors,

(4) communicating with the debtor's heirs about estate agreements with the debtor prior to his passing and about resolution of outstanding issues in the case,

(5) researching homestead exemption issues,

(6) advising the trustee about the general administration of the estate, and

(7) preparing and filing employment and compensation motions.

The court concludes that the second interim compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved. All compensation, including what the court awarded for the first interim period, will be approved on a final basis.

7. 16-22482-A-7 TIMOTHY MUNSON
HCS-3

MOTION TO
SELL AND TO APPROVE COMPROMISE
6-18-18 [41]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for $25,000 the estate's one-third interest in real property in Lodi, California to Shanon Cabebe. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee further asks for approval of the transaction as a compromise with the buyer Shanon Cabebe, resolving a dispute over the estate's interest in the property.

Shanon Cabebe, the debtor, and a third party purchased the property pre-petition, with each of them owning one-third interest in the property. Shanon Cabebe alleges that he purchased the interests of the debtor (pre-petition) and the third party, but the executed grant deed(s) was lost and never recorded. The trustee contends that he can avoid and recover the transfer of the debtor's one-third interest in the property. The trustee argues that he is a bona fide purchaser for value. See 11 U.S.C. § 544(a)(3).

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

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 sale is "as is," without warranty or representation, and it is subject to any and all encumbrances or liabilities against the property.

The sale will generate proceeds for distribution to creditors of the estate, without the need for further litigation relating to the estate's interest in the property.

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. The court will waive the 14-day period of Fed. R. Bankr. P. 6004(h).

The court concludes that the Woodson factors balance in favor of approving the transaction as a compromise. That is, given the relatively small amount at stake and the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court will approve the transaction as a compromise as well. It is 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. The motion will be granted.

8. 18-24391-A-7 RACHAEL OIE — ORDER TO SHOW CAUSE 10-19-18 [25]

**Tentative Ruling:** The case will be dismissed.

The debtor filed an amended master address list on October 4, 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).

9. 11-22897-A-7 MICHAEL/COLEEN NOVO — MOTION TO AVOID JUDICIAL LIEN 9-24-18 [41]
RWH-3
VS. THE COMMERCIAL AGENCY

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of The Commercial Agency for the sum of $154,110.30 on September 9, 2010. The abstract of judgment was recorded with Nevada County on October 6, 2010. That lien attached to the debtor's interest in a residential real property in Penn Valley, California (Kingbird Court). The debtors are seeking avoidance of the lien under 11 U.S.C. § 522(f)(1)(A).

The subject real property had an approximate value of $209,000 as of the petition date. Docket 43. The unavoidable liens totaled $250,137 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 43 & 44. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 34, 43, 44.

The motion will be denied because the debtors amended Schedule C on August 16, 2018, to add an exemption in the subject property, but they did not serve the Amended Schedule C on any of the creditors, informing them of the added exemption. See Dockets 3 & 35. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtors have not afforded parties in interest such an opportunity, the motion will be denied.

10. 17-26097-A-7 JANACE LIPPI — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER 10-2-18 [67]
HMS-2

**Tentative Ruling:** The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $771,000 100% interest in a real property in Carmichael, California to Michael and Hillary Tucker.

The estate owns only a 50% interest in the property. The other 50% interest is owned by the debtor's nonfiling spouse, who has stipulated to the sale of the entire property. Docket 70 Ex. B. The debtor and her nonfiling spouse hold title to the property as joint tenants, each owning 50% interest in the property.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commissions.

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

The motion will be denied without prejudice. The motion does not itemize the encumbrances against the property and does not make it clear that every encumbrance will be paid from escrow.

Further, the motion is unclear as whether the property and the proceeds from sale are community or separate property of the debtor and her nonfiling spouse. The motion state that the trustee obtained a stipulation from the nonfiling spouse to sell the entire property, suggesting that the trustee is treating the property and sale proceeds as separate property.

On the other hand, however, the trustee's itemization of how the sale proceeds will be paid does not include a distribution of 50% of the net proceeds to the nonfiling spouse, in effect treating the sale proceeds as community property. The itemized distribution in the motion says that the trustee will keep all net proceeds from the sale, after payment of sale costs, secured claim ($535,000 not itemized), and the debtor's $100,000 exemption. Docket 67 at 3.

The court cannot grant the motion until the above issues are resolved.

***FINAL RULINGS BEGIN HERE***

11. 12-30911-A-7 VILLAGE CONCEPTS, INC. OBJECTION TO
DNL-20 CLAIM
VS. KOPP FAMILY TRUST 9-21-18 [356]

**Final Ruling:** This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the $1,831,995.73 general unsecured proof of claim (POC 35-1) of the Kopp Family Trust. The trustee seeks disallowance, contending that the claim has insufficient supporting documentation.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

"*Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.*"

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The proof of claim attaches only a general ledger of beginning and ending balances, reflecting the final amount as referenced in the proof of claim form. The proof of claim contains no evidence of actual transfers from the trust to the debtor.

Although generally the failure to append sufficient documentation to a proof of claim is not adequate basis to disallow the claim, the trustee cannot be expected to prove a false negative either. As the trustee does not have documentation evidencing the loans and transfers pertaining to the loans, the claimant should establish the claim. This is especially true in this case, as the claimant is an insider. The debtor's president Mark Weiner and his wife are the trustees and sole beneficiaries of the Kopp Trust. And the trust is

the sole shareholder of the debtor. Docket 358.

Given the trust's failure to respond and establish the claim, the objection will be sustained and the claim will be disallowed.

12. 12-30911-A-7 VILLAGE CONCEPTS, INC. OBJECTION TO
DNL-21 CLAIM
VS. DANIEL GRYDER AND SHANNON LEGORRETA 9-21-18 [361]

**Final Ruling**: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the $225,000 general unsecured proof of claim (POC 5-1) of Daniel Gryder and Shannon Legorreta. The trustee seeks disallowance, contending that the claim has been settled.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

"*Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.*"

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The trustee has overcome the presumptive validity of the claim. The claimants entered into a settlement agreement for $15,000 with the debtor, during the initial chapter 11 phase of the case. According to the debtor's president, Mark Weiner, the settlement sum was paid from insurance proceeds. See Docket 364 Exs. B & C at 48 (as marked).

The claimants have not come forward with any evidence to refute the settlement of the claim and payment of the settlement amount. Accordingly, the claimants have not carried their ultimate burden of persuasion of establishing the claim.

The court also notes that the proof of claim does not attach any supporting documents. Although generally the failure to append documentation to a proof of claim is not sufficient basis to disallow the claim, when only the claimant has the information that is necessary for a party in interest to determine whether to object to the claim and such information is not provided by the claimant, the claim will be disallowed. The objection will be sustained.

13. 18-25417-A-7 BARBARA COLLINS — AMENDED MOTION FOR
TGM-1 — RELIEF FROM AUTOMATIC STAY
WILMINGTON TRUST, N.A. VS. — 10-5-18 [20]

**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, Wilmington Trust, N.A., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $502,300 and it is encumbered by claims totaling approximately $724,732. The movant's deed is in first priority position and secures a claim of approximately $596,356.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 18, 2018.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

14. 13-22623-A-7 MICHAEL DIRAIN AND JANE BERTOLANI
EJS-1
VS. CACH, L.L.C.

MOTION TO AVOID JUDICIAL LIEN
9-25-18 [22]

**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 respondent creditor 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.

A judgment was entered against debtor Michael Darain in favor of Cach, L.L.C. for the sum of $7,644.88 on January 25, 2012. The abstract of judgment was recorded with Sacramento County on June 13, 2012. That lien attached to the debtor's interest in a residential real property in Antelope, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $190,000 as of the petition date. Docket 24. The unavoidable liens totaled $249,524 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 24 & 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 24 & 1.

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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

15. 15-21533-A-7 ROBERT/DELORES ANDERSON
MHK-3

MOTION FOR APPROVAL OF ADDITIONAL SETTLEMENT PAYMENT
10-3-18 [67]

**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.

On February 14, 2017, this court entered an order approving a settlement agreement on account of the debtors' pelvic mesh products liability claim. Docket 60. The settlement, processed through a multi district litigation

process, was for $100,000, with net proceeds to the estate of $49,829.35. $25,575 of what the estate received was paid to the debtors on account of their exemption in the claim. The ruling approving this settlement provided:

"*The trustee requests approval of a settlement agreement between the estate and the debtors on one hand and the manufacturer of a medical device that was implanted in the debtor Delores Anderson and, based upon which, a products liability suit was instituted by the debtors against the manufacturer.*

"*Under the terms of the compromise, the manufacturer will pay a gross amount of $100,000 on account of the debtor's harm from the implanted device. After the payment of attorney's fees and costs, a 5% common benefit assessment, $302.24 to the Centers for Medicare and Medicaid Services, $4,507.20 to Kaiser Permanente on account of a medical lien for remedial services relating to the device, and a $285 lien resolution fee to Shapiro Settlement Solutions, the trustee expects that a net of $49,829.35 will be available to the estate and the debtors, on account of their exemption claim.*

". . . .

"*The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the litigation was conducted through a multi district litigation procedure, given the additional uncertainties and difficulties associated with litigating the claim outside the multi district litigation procedure, given that the settlement was facilitated by a court-appointed special master who evaluated claims according to medical and other factors, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.*"

Docket 61.

The trustee now requests approval of a settlement agreement with another medical device manufacturer over the same injury.

Under the terms of this compromise, this manufacturer will pay a gross amount of $12,000 on account of the debtor's harm from the implanted device. After the payment of multi district litigation attorney's fees (40% of recovery) ($4,560), a 5% common benefit assessment ($600), expenses ($2,248.43), and $6.04 on account of a medical lien, the trustee estimates that a net of $4,585.53 will be available to the estate. The trustee will execute a general release of rights and claims.

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 that the litigation was conducted through a multi district litigation procedure, given the additional uncertainties and difficulties associated with litigating the claim outside the multi district

litigation procedure, given that the settlement was facilitated by a court-appointed special master who evaluated claims according to medical and other factors, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes this 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.

16. 17-22851-A-7 ABDUL/TAHMINA RAUF — MOTION TO APPROVE STIPULATION RE PROSECUTION OF ADVERSARY PROCEEDING
BHS-4 — 10-17-18 [82]

**Final Ruling:** The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(3), which requires at least 21 days' notice of the hearing on motions to compromise or settle controversies. The subject motion was served on October 17, giving only 19 days' notice of the November 5 hearing. Dockets 86 & 87.

17. 16-22654-A-7 MARC LIM — MOTION TO DISTRIBUTE HOMESTEAD EXEMPTION FUNDS
HSM-17 — 10-5-18 [222]

**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 is seeking permission to distribute funds on account of the debtor's exemption on real property in Elk Grove, California. The court approved the sale in an order entered on August 30, 2017. Docket 200. The order directed the trustee to hold $100,000 earmarked for payment of the debtor's exemption claim against property, pending a further order of the court.

The reason the exemption amount was not distributed due creditor Chick's Produce, Inc., objection to the exemption. See Docket 197. However, on November 20, 2017, creditors Chick's Produce, Inc. and Del-Fresh Produce, Inc. filed a notice of waiver of their rights against the debtor's exemption on the property. Docket 219.

Further, as the debtor has passed away, a probate proceeding was initiated in June 2018 to administer the debtor's assets. According to the trustee, the debtor's son, Christian Lim, was appointed as personal representative and administrator in the probate estate.

The trustee is seeking permission to disburse the $100,000 to Christian Lim, in his capacity of representative of the debtor's probate estate.

Given the waiver of challenge to the exemption by the creditors and given the existence of a probate proceeding for the late debtor, the court will authorize the trustee to distribute the exemption funds to the representative of the probate estate for the debtor, Christian Lim. The motion will be granted.

18. 16-25666-A-7 DMW-5 — THOMAS MALONEY AND ANN THOMAS — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 10-5-18 [76]

**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 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.

Jeffrey Wilson, CPA, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,044 in fees and $54 in expenses, for a total of $1,098. This motion covers the period from June 25, 2018 through September 28, 2018. The court approved the movant's employment as the estate's accountant on June 25, 2018. In performing its services, the movant charged an hourly rate of $290.

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 principal services included preparing estate tax returns.

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

19. 18-25274-A-7 MS-1 — EDUARDO/AMANDA QUIROZ — MOTION TO COMPEL ABANDONMENT 9-23-18 [10]

**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 in Sacramento, California. The entire equity in the property is exempt.

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 produced evidence that the property has a value of $347,569. Docket 13. The property is encumbered by a single deed of trust in favor U.S. Bank in the amount of $285,018.76. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrance, exemption claim, and likely liquidation costs of approximately $27,805 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.