

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 18, 2014 at 9:32 A.M.

1. [14-21607](#)-B-7 RENA WASHINGTON
PA-3

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
8-28-14 [[46](#)]

Tentative Ruling: This objection continued from October 7, 2014, for supplemental briefing. Both the chapter 7 trustee and the debtor timely filed supplemental briefs. The court now issues the following tentative ruling on the merits of the objection.

The debtor's opposition is sustained. The objection is overruled.

The trustee objects to the following claims of exemption claimed on amended Schedule C filed by the debtors on July 29, 2014 (Dkt. 39):

1.) "Right to proceed on settlement of wrongful termination suit" in the amount of \$20,000.00 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) (the "Wrongful Termination Proceeds");

2.) "Right to proceed's on settlement of wrongful termination suit (lost wages damages)" in the amount of \$10,000.00 pursuant to Cal. Civ. Proc. Code § 703.140(b)(11)(E) (the "Lost Wages Proceeds");

3.) "Traditional IRA account with Travis Credit Union" in the amount of \$20,152.21 pursuant to Cal. Civ. Proc. Code § 703.140(b)(10)(E) (the "IRA");

4.) "2013 federal refund" in the amount of \$3473.00 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) (the "Federal Refund").

5.) "2013 state tax return" in the amount of \$877.00 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) (the "State Refund").

With respect to the Lost Wages Proceeds and the IRA, the trustee argues that those claims of exemption should be disallowed because the debtor has not met her burden of proof to show that the Lost Wages Proceeds are a payment in compensation of loss of future earnings or that they are reasonably necessary for the support of the debtor and any dependent of the debtor, and that the IRA is not reasonably necessary for the support of the debtor and any dependent of the debtor. Fed. R. Bankr. P. 4003(c) provides that on an objection to a claim of exemption, "the objecting party has the burden of proving that the exemptions are not properly claimed." However, the trustee seeks to place the burden of proof on the debtor pursuant to a decision by the Hon. Michael S. McManus in In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) and a dissent by the

Hon. Christopher M. Klein in In re Davis, 323 B.R. 732 (9th Cir. BAP, 2005) each of whom stated that in light of the Supreme Court's decision in Raleigh v. Illinois Department of Revenue, 530 U.S. 15 (2000) that the burden of proof on an objection should be governed by California law and not Fed. R. Bankr. P. 4003(c). Specifically, Cal. Civ. Proc. Code § 703.850(b) puts the burden of proof on the party claiming an exemption to defend the exemption if challenged.

The court does not agree with the trustee's allocation of the burden of proof in this case. Raleigh, the Supreme Court decision on which Barnes and the dissent in Davis are based, did not involve an objection to a claim of exemption, but an objection to a claim, which is not governed by Fed. R. Bankr. P. 4003(c) but by Fed. R. Bankr. P. 3001 and 3007, neither of which alters the burden of proof between a debtor and an objecting party with respect to objections to claims; Fed. R. Bankr. P. 3001(f) merely gives certain evidentiary effect to a claim properly executed and completed in accordance with the Rules. In contrast, Fed. R. Bankr. P. 4003(c) explicitly alters the burden of proof between the debtor and the objecting party. Neither Barnes nor the dissent in Davis is binding on this court. The court instead places the burden of proof on an objection to a claim of exemption on this trustee. As stated by the 9th Circuit Bankruptcy Appellate Panel in In re Nicholson, 435 B.R. 622, 633-34 (9th Cir. BAP 2010):

As the Supreme Court has recognized, bankruptcy exemptions are authorized and regulated by Congress in § 522 of the Bankruptcy Code. See Schwab v. Reilly, at 2658-59. Although state law may control the "nature and extent" of state law exemptions, subject to the limitations set forth in the Bankruptcy Code, "the manner in which such exemptions are to be claimed, set apart, and awarded, is regulated and determined by the federal courts, as a matter of procedure in the course of bankruptcy administration, as to which they are not bound or limited by state decisions or statutes." In re Moore, 274 F. 645, 648 (E.D.Mich.1921); see also Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15, 21, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) ("Congress of course may do what it likes with entitlements in bankruptcy"). Because Congress has regulated the allowance of exemptions in bankruptcy, the Code and Rules may alter burdens of proof relating to exemptions, even if those burdens are part of the "substantive" right under state law. See Raleigh v. Illinois Dep't of Revenue, 530 U.S. at 21-22 and n. 2, 120 S.Ct. 1951. In implementing the provisions of § 522(1), Rule 4003(c) places the burden of proof on the objecting party, see Fed. R. Bankr.P. 4003, Advisory Committee Note ("This rule is derived from § 522(1) of the Code"). Bankruptcy courts may, in turn, define that burden because of their "equitable powers to adjust rights between creditors." Raleigh v. Illinois Dep't of Revenue, 530 U.S. at 24, 120 S.Ct. 1951; see also Thomas E. Plank, The Erie Doctrine and Bankruptcy, 79 Notre Dame L.Rev. 633, 679-80 (2004).

Nicholson, 435 B.R. at 633-34. See also In re Thiem, 443 B.R. 832 (Bankr. D. Ariz. 2011) (recognizing that there "may be an unresolved issue regarding the burden of proof in exemptions claimed under state law," but noting that Fed. R. Bankr. P. 3001(f) does not address the burdens of proof when a trustee disputes a claim and presuming that the Supreme

Court in Raleigh did not affect the ultimate burden of proof under Fed. R. Bankr. P. 4003(c)).

In light of the foregoing, the court places the burden of proof on the trustee to show that the debtor is not entitled to the exemptions in the Lost Wages Proceeds or the IRA. The court finds that the trustee has not satisfied that burden, the trustee having done no more than challenge the debtor to prove up the claims of exemption.

Alternatively, with respect to all of the claims of exemption described above, the trustee argues for disallowance of the claims of exemption based on the debtors' alleged bad faith, which the trustee alleges includes concealment of the assets claimed as exempt, failure to make full complete disclosure of the assets. The Supreme Court recently held Law v. Siegel, 134 S.Ct. 1188 (2014) that there is no general equitable power given to bankruptcy courts by the Bankruptcy Code to deny exemptions based on a debtor's bad faith conduct. However, Siegel also recognizes that "It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption." Siegel, 134 S.Ct. at 1196-97. To that end, the trustee cites to "maxims of jurisprudence" codified in California Civil Code § 3509, et seq., (the "Maxims") to support the disallowance of the debtor's claims of exemption under Cal. Civ. Proc. Code § 703.010, et seq.

The court will analyze the trustee's alternative argument for application of the Civil Code's Maxims to the enforcement of judgments statutes in the Code of Civil Procedure (the "Enforcement of Judgments Law") as part of a two-step process. First, the court considers whether the approach is warranted by interpretation of the statutes themselves. Second, if the trustee's argument is not supported by principles of statutory construction, the court will consider whether the trustee has shown that in the absence of statutory authority supporting the trustee's argument, whether the Supreme Court of California has held or would hold that the Maxims qualify the Code of Civil Procedure's statutes regarding enforcement of judgments. This two-step approach is dictated by the longstanding choice of law principles enunciated by the Supreme Court in Erie Railroad Company v. Tompkins, 304 U.S. 64 (1938), commonly referred to as the "Erie Doctrine." Specifically, the Court in Erie held that in diversity of citizenship cases, the law to be applied in any case is the law of the state, as declared either by its legislature in a statute or by its highest court in a decision. Erie, 304 U.S. at 78. Although the court recognizes that a bankruptcy case is not based on diversity of citizenship, the Erie Doctrine has been held applicable to non-diversity cases as well. 19 C. Wright & A. Miller, Fed. Practice and Procedure § 4520 (2d ed. 2014) ("It frequently is said that the doctrine of Erie Railroad Company v. Tompkins applies only in diversity of citizenship cases; this statement simply is wrong"). Federal courts have applied state law where there is pendent or supplemental jurisdiction. Id.; Felder v. Casey, 487 U.S. 131, 151 (1988) (the Erie Doctrine applies equally to state law claims that are brought to the federal courts through supplemental jurisdiction); Hoyos v. Telecorp Communications, Inc., 488 F.3d 1, 5 (1st Cir. 2007) ("a federal court sitting in diversity or exercising supplemental jurisdiction over state law claims must apply state substantive law, but a federal court applies federal rules of procedure to its proceedings"). The Erie Doctrine has also been applied to the interpretation of state exemption law in a bankruptcy

case. 1256 Hertel Avenue Assoc., LLC v. Calloway, 761 F.3d 252, 261 n.5 (2nd Cir. 2014).

Thus, the Erie Doctrine directs the court to follow 1.) state statutes or 2.) the rule of decision of the Supreme Court of California. 17A James Wm. Moore et al., Moore's Federal Practice § 124.20[1] (3d ed. 2004) ("When state law provides the rule of decision under the Erie doctrine, federal courts must generally accept a decision of the state's highest court as a definitive statement of state law"); West v. American Tel. & Tel. Co., 311 U.S. 223, 236 (1940) ("the highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted by federal courts as defining state law unless it has later given clear and persuasive indication that its pronouncement will be modified, limited or restricted").

With respect to the first inquiry, the court finds that interpretation of the interplay (or lack thereof) between the Maxims and the Enforcement of Judgments Law does not support the trustee's argument. As the court previously pointed out to the trustee, Cal. Civ. Code § 3509 also states that the "maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application." There is nothing in the California Civil Code or the Code of Civil Procedure which requires the court to apply the general Maxims contained in the Civil Code to the detailed and comprehensive Enforcement of Judgments Law. As a matter of statutory construction, the court is required to give effect to the more specific statute when two such statutes address the same subjects. HCSC-Laundry v. United States, 450 U.S. 1, 6, 101 S.Ct. 836, 839 (1981); see also Fujifilm Corp. v. Yang, 223 Cal.App.4th 326, 336 (2014) ("[P]articular provisions of a law ordinarily prevail over more general provisions.").

The Enforcement of Judgments Law in the Code of Civil Procedure does in fact state two particular grounds on which a claim of exemption may be opposed: 1.) the property is not exempt under the statute under which it is claimed, and 2.) the equity in the property to be claimed as exempt is in excess of the amount provided in the applicable exemption. Cal. Civ. Proc. Code 703.560(a). Neither of those grounds addresses the good faith of the party claiming the exemption. Under the doctrine of expressio unius est exclusio alterius, the court presumes that the expression of certain things in a statute necessarily involves the exclusion of other things not expressed. See Silvers v. Sony Pictures Entm't, Inc., 402 F.3d 881, 885 (9th Cir.2005); People v. Whitmer, 179 Cal.Rptr.3d 112, 121 (2014). In this case, the court concludes that the absence of bad faith from the grounds for opposition to the debtor's claims of exemption is an intentional exclusion and therefore is not to be considered. The trustee has cited no binding authority to the contrary.

With respect to the second inquiry, neither the debtor nor the trustee party has cited any Supreme Court of California decision that definitively decides whether the Maxims generally qualify the exemption provisions of the Enforcement of Judgments Law and the court is unaware of such any such decision. In such a situation, federal courts are instructed to predict the way the highest state court would rule if presented with the issue. 17A James Wm. Moore et al., Moore's Federal Practice § 124.22[3]; Aetna Casualty & Surety Co. v. Sheft, 989 F.2d 1105, 1108 (9th Cir. 1993) ("When a decision turns on applicable state law and the state's highest court has not adjudicated the issue, a federal court must make a reasonable determination of the result the

highest state court would reach if it were deciding the case"). In performing this function, "in the absence of direct authority the federal court may look to state high court decisions in related or analogous cases for an indication of how the state's highest court is likely to rule. Similarly, considered dicta of the state's highest court is persuasive evidence of how the state's highest court might rule. In absence of other authority, federal courts may follow the considered dicta of the state's highest court." 17A James Wm. Moore et al., Moore's Federal Practice § 124.22[3]. This court construes the reference to "state high court decisions" to refer to state intermediate appellate court decisions.

The trustee's supplemental brief does not persuade the court that the California Supreme Court has held or would hold that the Maxims should be applied in this case, or that there exists a general "bad faith" ground for disallowance of a claim of exemption under California law. The trustee cites In re Crosby's Estate, 2 Cal.2d 470, 473 (1935), in which the Supreme Court of California stated that the construction given to statutes authorizing claims of exemption "must be a reasonable one and 'not one which would pervert the benevolent design and enable gross frauds to be perpetrated under color of law.'" The court does not find the general statement that court must construe the exemption statutes in a reasonable manner to require it to apply the Maxims to the Enforcement of Judgments Law, nor that the issue of the debtor's good faith be taken into account. The court also does not find the statement to be a predictor of how the California Supreme Court would resolve the issue if it were put to it now. As the Crosby's Estate court itself stated, the manifest purpose of California's exemption statutes is "to sav[e] debtors and their families from want by reason of misfortune or improvidence." Crosby's Estate, 2 Cal.2d at 473. An inquiry into the debtor's good faith does not serve the aforementioned purpose of the exemption statutes.

The court will issue a minute order.

2.	<u>11-35325</u> -B-7 JAMES COXETER	MOTION FOR ADMINISTRATIVE
	MPD-24	EXPENSES
		10-20-14 [<u>1184</u>]

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. § 503(b)(1)(A), the court allows as an administrative expense \$10,000.00 to be paid from the estate assets by the chapter 7 trustee to UST Global Private Markets Fund ("UST") for the purpose of satisfying UST's request for a cash capital call which was due on February 10, 2014. Except as so ordered, the motion is denied.

The court finds that the authorized administrative expense is an actual and necessary cost of preserving the estate for the reasons set forth in the motion.

The court will issue a minute order.

3. [11-35325](#)-B-7 JAMES COXETER MOTION TO APPROVE FIRST
MPD-25 EXTENSION TO TOLLING AGREEMENT
BETWEEN THE TRUSTEE AND
JACKSON, DEMARCO, TIDUS AND
PECKENPAUGH
10-21-14 [[1190](#)]

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

The motion is granted. The chapter 7 trustee is authorized to enter into and perform in accordance with the First Extension of Tolling Agreement filed as Exhibit "A" to the motion (Dkt. 1193 at 2). Except as so ordered, the motion is denied.

The court will issue a minute order.

4. [13-25279](#)-B-7 JOSEPH/ROSE ANDER MOTION TO DISMISS ADVERSARY
[13-2225](#) PROCEEDING
ACK FAMILY LIMITED PARTNERSHIP 10-8-14 [[38](#)]
V. ANDER ET AL

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

The motion is granted. The adversary proceeding is dismissed pursuant to Fed. R. Bankr. P. 7041, incorporating Fed. R. Civ. P. 41(a)(2). Except as so ordered, the motion is denied.

The court will issue a minute order.

5. [11-37711](#)-B-7 DELANO RETAIL PARTNERS, MOTION FOR COMPENSATION FOR
HSM-10 LLC ACCOUNTANTS TO TRUSTEE
10-15-14 [[138](#)]

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

The application is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$10,541.50 in fees and \$6.50 in costs, for a total of \$10,548.00 for services rendered during the period November 14, 2011, to January 31, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On July 19, 2011, the debtor filed a chapter 7 petition. By order entered on September 27, 2011 (Dkt. 27), the court authorized employment of the applicant as accountants for chapter 7 trustee. The applicant now

seeks compensation for services for the period of November 14, 2011, through January 31, 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.

6. [14-25018](#)-B-7 PATRICIA SIRKIN MOTION FOR COMPENSATION FOR
DMW-3 NORTHSTATE AUCTIONS,
AUCTIONEER(S)
10-16-14 [[21](#)]

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

The application is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$1302.84 in fees and \$340.00 in costs, for a total of \$1642.84 in fees and costs, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

On May 13, 2014, the debtor filed a chapter 7 petition. By order entered on July 28, 2014 (Dkt. 16), the court authorized employment of the applicant as auctioneer for chapter 7 trustee. The applicant now seeks compensation consisting of a 12% commission on the sale of personal property of the estate consisting of the debtor's interest in a 2009 Subaru Legacy automobile, plus costs related to transportation of the property. 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. [14-27734](#)-B-7 ROBERTO RODRIGUEZ MOTION TO EXTEND DEADLINE TO
HSM-2 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
10-21-14 [[41](#)]

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

The motion is granted. Pursuant to Fed. R. Bankr. P. 4004(b), the deadline for the chapter 7 trustee to file a complaint objecting to the debtor's discharge is extended to and including January 23, 2015. Except as so ordered, the motion is denied.

The court will issue a minute order.

8. [08-22725](#)-B-7 BAYER PROTECTIVE MOTION FOR COMPENSATION FOR
BHS-2 SERVICES, INC. BARRY H. SPITZER, TRUSTEE'S
 ATTORNEY
 10-21-14 [[982](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the applicant's request for compensation in the amount of \$20,930.00 in fees and \$205.68 costs, for a total of \$21,135.68, for services rendered between March 11, 2014 and October 21, 2014 is approved on a first and final basis. The approved fees and costs shall be paid as a chapter 7 administrative expense.

The debtor commenced this case under chapter 11 on March 6, 2008. By order entered March 11, 2014, the court converted the case to one under chapter 7. A chapter 7 trustee was appointed. By order entered March 28, 2014, the court approved the employment of the applicant as counsel for the chapter 7 trustee with an effective date of employment of March 11, 2014. The applicant now seeks approval of compensation on a first and final basis in the amount of \$20,930.00 in fees and \$205.68 costs, for a total of \$21,135.68, for services rendered between March 11, 2014 and October 21, 2014. The court finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a).

The court will issue a minute order.

9. [08-22725](#)-B-7 BAYER PROTECTIVE MOTION FOR COMPENSATION FOR
GMR-2 SERVICES, INC. MICHAEL R. GABRIELSON,
 ACCOUNTANT
 10-21-14 [[989](#)]

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

The motion is granted to the extent set forth herein. The court's order approving the employment of the applicant entered March 28, 2014 (Dkt. 870) (the "Order") will be amended to specify an effective date of employment of March 11, 2014. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the court approves on a first and final basis compensation for the bankruptcy estate's accountant, Gabrielson & Company ("G&C"), in the amount of \$43,021.50 in fees and \$443.30 in expenses, for a total of \$43,464.80, for services rendered and costs incurred during the period of March 11, 2014, through and including September 25, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtor commenced this case under chapter 11 on March 6, 2008. By order entered March 11, 2014, the court converted the case to one under chapter 7. A chapter 7 trustee was appointed. By entry of the Order on

March 28, 2014, the court approved the employment of the G&C as accountants for the chapter 7 trustee. The Order does not specify an effective date of employment, so G&C's employment was effective March 28, 2014. The application for an order authorizing G&C's employment was filed on March 14, 2014 (Dkt. 806). 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 G&C's employment retroactive to March 11, 2014, the first date on which G&C rendered services to the trustee according to the attached billing records (Dkt. 992). The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). In this case, the court grants an effective date of March 11, 2014.

In the absence of an objection from any party in interest, the court finds that, as set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services.

G&C shall submit an amended form of employment order which is identical to the Order, but which shall in addition specify an effective date of employment of March 11, 2014. Upon entry of the amended employment order, the court will issue a minute order granting the motion as set forth above.

10.	09-34235 -B-7	SIERRA WEST BUSINESS	MOTION FOR COMPENSATION FOR
	JRR-4	PARK, LLC	JOHN R. ROBERTS, CHAPTER 7
			TRUSTEE
			10-14-14 [382]

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

The application is approved to the extent set forth herein. Pursuant to 11 U.S.C. §§ 330(a) and 326(a) and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$30,357.66 in fees and \$328.87 in costs, for a total of \$30,686.53 in fees and costs. The approved fees are allowed and shall be paid as a chapter 7 administrative expense. Except as so ordered, the application is denied.

By this application the chapter 7 trustee seeks approval of fees and costs for services rendered to the estate between June 5, 2012 and September 30, 2014. The court finds that the approved fees and costs are reasonable compensation for actual and necessary services. 11 U.S.C. § 330(a).

The court will issue a minute order.

11. [13-20644](#)-B-7 PERRY YUEN
ET-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF EASON AND
TAMBORNINI FOR MATTHEW R.
EASON, DEBTOR'S ATTORNEY(S)
10-20-14 [[437](#)]

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

The application is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the applicant's request for compensation in the amount of \$6,100.00 in fees and \$0.00 in costs for a total of \$6,100.00 for services rendered during the period June 13, 2013, through July 23, 2013, is approved on a first and final basis. The approved fees and costs shall be paid, to the extent not already paid, as a chapter 11 administrative expense. Except as so ordered, the motion is denied.

The debtor commenced this case under chapter 11 on January 17, 2013. By order entered June 26, 2013, (Dkt. 289) the court approved the employment of the applicant as counsel for the debtor in possession, with an effective date of employment of June 13, 2013. The applicant now seeks approval of fees and costs totaling \$6100.00 for services rendered during the period June 13, 2013, to July 23, 2014, shortly before the conversion of the case to one under chapter 7 on July 30, 2014. The court finds that the approved fees and costs, which represent a discount of approximately \$5000.00 from the fees and costs stated as actually incurred on the applicant's billing records, are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a).

The court will issue a minute order.

12. [14-28052](#)-B-7 HENRY PENA
HCS-2

MOTION TO EMPLOY WEST AUCTIONS
AS AUCTIONEER, AUTHORIZING SALE
OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
10-21-14 [[15](#)]

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:

1.) Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the Property (as that term is defined in the motion) at public auction on an "as-is, where-is" basis in the manner described in the motion. The proceeds of the sale shall be administered for the benefit of the estate. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply.

2.) Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the

chapter 7 trustee is authorized to employ West Auctions, Inc. ("West") as auctioneer for the chapter 7 trustee for the purpose of selling the Property.

3.) The trustee is authorized pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016 to pay West compensation equal to twelve percent (12%) of the gross sale proceeds of the Property following the sale as a chapter 7 administrative expense. In addition to the foregoing commission, trustee is also authorized to pay West's actual expenses, if any, not to exceed \$800.00, related to the transport, storage and and sale of the Property as a chapter 7 administrative expense.

4.) Except as so ordered, the motion is denied.

With respect to employment and compensation of West, the court finds that West is a disinterested person as that term is defined in 11 U.S.C. § 101(14). The court also finds that the approved fees and costs are reasonable compensation for actual, necessary and beneficial services to be rendered to the estate. 11 U.S.C. § 330(a).

The court will issue a minute order.

13. [14-27857](#)-B-7 LIESL RYANT MOTION TO REDEEM
NBC-1 10-29-14 [[17](#)]

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.

14. [12-20997](#)-B-11 DONALD/ELIZABETH HYATT MOTION TO DISMISS CASE
MRL-4 10-20-14 [[112](#)]

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. § 1112(b)(1), the bankruptcy case is dismissed.

The court will issue a minute order.

15. [13-23353](#)-B-7 ALLEN-SIMMONS HEATING & CONTINUED MOTION TO COMPROMISE
PA-7 SHEET METAL CO. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CORDELIA POINT,
LLC
10-7-14 [[65](#)]

Tentative Ruling: This matter is continued from November 4, 2014, at 9:32 a.m. to allow the trustee an opportunity to supplement the record with a copy of a fully executed settlement agreement. The notice of continued

hearing (Dkt. 72) allows for opposition to be presented at the hearing. Subject to any such opposition, the court issues the following tentative ruling.

The motion is granted, and the trustee is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement attached as supplemental Exhibit "1" to the motion (Dkt. 73, pp.3-10) (the "Agreement"). Except as so ordered, the motion is denied.

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

The trustee alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will resolve a dispute between the trustee and Cordelia Point, LLC ("Cordelia") regarding Cordelia's filed administrative priority claim(s) for unpaid post-petition rents. The Agreement will also result in the withdrawal, with prejudice, of Cordelia's claim(s) for unpaid pre-petition rent and utility expenses. The trustee alleges without dispute that the Agreement will avoid potentially expensive, uncertain litigation and will allow for a timely administration to the estate with an increased dividend to other creditors. In the absence of opposition, the court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

16. [13-33458](#)-B-7 ROY ARRIAGA
TAA-4

OBJECTION TO CLAIM OF DONNA
ARGE, CLAIM NUMBER 12
10-1-14 [[47](#)]

WITHDRAWN BY M.P.

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

The objection is removed from the calendar. The trustee withdrew the objection on November 3, 2014 (Dkt. 52).

17. [13-32865](#)-B-7 APNA INVESTMENTS, INC., MOTION FOR COMPENSATION BY THE
DNL-7 A CALIFORNIA CORPORATION LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
LUKE HENDRIX, TRUSTEE'S
ATTORNEY(S)
10-28-14 [[138](#)]

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.

18. [14-21466](#)-B-7 ANTHONY/SUZANNE VENTURA MOTION TO COMPROMISE
BHS-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JACQUELINE RICE,
DARIN RICE, GERALD KOSHMAN AND
ROBERT A. KOSHMAN
10-17-14 [[108](#)]

Tentative Ruling: The motion is granted in part. The trustee is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement Regarding Sale and Assignment of Claims in Bankruptcy attached as Exhibit "A" to the motion (Dkt. 111, pp.2-6) (the "Agreement"). Pursuant to the Agreement and 11 U.S.C. § 363(b), the trustee is also authorized to sell the estate's interest in the lawsuits (and all causes of action therein) more fully described in the motion and Agreement (the "Lawsuits"). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale and to effect the Agreement. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply. Except as so ordered, the motion is denied.

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

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

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

The trustee alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will immediately net for the estate \$30,000.00 without the cost, risk, and delay associated with trial. Additionally, the trustee alleges without dispute that the Lawsuits have very limited, if any,

value to the estate. In the absence of opposition, the court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

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

19. [14-21466](#)-B-7 ANTHONY/SUZANNE VENTURA MOTION TO COMPROMISE
BHS-3 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THE HUMANE
SOCIETY OF THE SIERRA FOOTHILLS
10-17-14 [[114](#)]

Tentative Ruling: The motion is granted in part. The trustee is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement Regarding Sale and Assignment of Claims in Bankruptcy attached as Exhibit "A" to the motion (Dkt. 117, pp.2-5) (the "Agreement"). Pursuant to the Agreement and 11 U.S.C. § 363(b), the trustee is also authorized to sell the estate's interest in the lawsuits (and all causes of action therein) more fully described in the motion and Agreement (the "Lawsuits"). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale and to effect the Agreement. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply. Except as so ordered, the motion is denied.

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

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

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

The trustee alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will immediately net for the estate \$10,000.00 without the cost, risk, and delay associated with trial. Additionally, the trustee alleges without dispute that the Lawsuits have very limited, if any, value to the estate. In the absence of opposition, the court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried his burden of

persuading the court that the Agreement is fair and equitable, and the motion is granted.

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

20. [14-21466](#)-B-7 ANTHONY/SUZANNE VENTURA MOTION TO SELL
BHS-4 10-17-14 [[120](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to sell the estate's interest in thirty (30) horses more fully described in the supplemental attachment to the Purchase and Sale Agreement, which has been attached to the motion as Exhibit "A" (Dkt. 123) (the "Agreement"), in an "as-is, where-is" condition to the Humane Society of the Sierra Foothills for \$20,000.00 on the terms set forth in the Agreement. The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) shall not apply. Except as so ordered, the motion is denied.

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

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

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

21. [11-31467](#)-B-7 PRIVATE INDUSTRY COUNCIL MOTION FOR COMPENSATION FOR
MPD-16 OF BUTTE COUNTY WAYNE BROWN, ACCOUNTANT
10-20-14 [[140](#)]

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. § 330 and Federal Rule of Bankruptcy Procedure 2016, the application is approved on a first and final basis in the total amount of \$6,000.00 in fees and costs for services rendered during the period of February 10, 2012, through and including August 18, 2014. The foregoing amount is payable to Wayne Brown ("Brown") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtor commenced the above-captioned case by filing a voluntary petition under chapter 7 on May 9, 2011 (Dkt. 1). By order entered March 7, 2012 (Dkt. 99), the court authorized the chapter 7 trustee to employ Brown as accountant for the bankruptcy estate, with an effective date of

employment of February 1, 2012. The chapter 7 trustee now seeks approval of compensation for Brown for services rendered and costs incurred during the period of February 10, 2012, through and including August 18, 2014. The court finds that the approved fees are reasonable compensation for actual, necessary services.

The court will issue a minute order.

22. [14-26669](#)-B-7 NATHAN/RACHEL MCGRAW MOTION TO AVOID LIEN OF
MOH-1 AMERICAN EXPRESS CENTURION BANK
10-14-14 [[17](#)]

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 Centurion Bank, recorded in the official records of Butte County, Document Number 2011-0020735, is avoided as against the real property located at 351 Weymouth Way, Chico, California 95973 (the "Property").

The Property has a value of \$403,500.00 as of the date of the petition. The unavoidable liens total \$404,788.36. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$1,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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.

23. [14-26669](#)-B-7 NATHAN/RACHEL MCGRAW MOTION TO AVOID LIEN OF
MOH-2 CITIBANK (SOUTH DAKOTA), N.A.
10-14-14 [[22](#)]

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 Citibank (South Dakota), N.A., recorded in the official records of Butte County, Document Number 2011-0023593, is avoided as against the real property located at 351 Weymouth Way, Chico, California 95973 (the "Property").

The Property has a value of \$403,500.00 as of the date of the petition. The unavoidable liens total \$404,788.36. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$1,000.00. The respondent holds

a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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.

24. [14-22276](#)-B-7 SHAWNA EMERY MOTION TO DISMISS ADVERSARY
[14-2169](#) HLC-1 PROCEEDING
BEARDMORE COMPANY, LLC V. 10-20-14 [[26](#)]
EMERY

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

The motion is granted. The adversary proceeding is dismissed with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041, incorporating Federal Rule of Civil Procedure 41(a)(2). Each party shall be responsible for its own costs. Except as so ordered, the motion is denied.

The court will issue a minute order.

25. [13-34754](#)-B-11 CIELO VINEYARDS & CONTINUED MOTION TO CONVERT TO
WSS-3 WINERY, LLC CHAPTER 7
8-27-14 [[192](#)]

Tentative Ruling: None.

26. [11-42576](#)-B-11 ATMAN HOSPITALITY GROUP, CONTINUED MOTION TO COMPROMISE
MLG-35 INC. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NUOVO LAND
DEVELOPMENT, LLC AND ATOJA
ENTERPRISES, LLC
10-7-14 [[611](#)]

Disposition Without Oral Argument: This matter is continued from November 4, 2014, at 9:32 a.m. with instructions to the moving party to supplement the record with an explanation as to why notice and service were proper pursuant to the terms of the confirmed chapter 11 plan in this case. The motion is unopposed. The court issued the following abbreviated ruling.

The motion is granted, and the chapter 11 post-confirmation plan administrator (the "Administrator") is authorized to enter into and perform in accordance with the terms set forth in the Mutual Release and

Settlement Agreement attached as Exhibit "A" to the motion (Dkt. 614, pp.2-7) (the "Agreement"). Except as so ordered, the motion is denied.

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

The Administrator alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. The Agreement will resolve a dispute between the estate and Nuovo Land Development, LLC and Atoja Enterprises, LLC (the "Nuovo Parties") regarding the Nuovo Parties' asserted right to an administrative claim based on their contributions to the estate in connection with the sale of unimproved real property in Merced, California. The Agreement constitutes less than twenty-five percent of the amount asserted by the Nuovo Parties, yet still compensates them for expenses directly connected to work they performed that was beneficial the estate. Furthermore, the Agreement will allow the Administrator to move forward with closing the estate in a timely manner without the costs or delays associated with litigation. In the absence of opposition, the court finds that the Agreement is a reasonable exercise of the Administrator's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the Administrator has carried his burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

27. [13-34499](#)-B-7 JEAN BOEHM
HCS-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF
HERUM\CRABTREE\SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
10-21-14 [[49](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$3,000.00 in fees and costs for the period of November 20, 2013, through and including November 18, 2014, payable as a chapter 7 administrative expense to the law firm Herum\Crabtree\Suntag ("HCS"). Except as so ordered, the motion is denied.

By order entered December 16, 2013 (Dkt. 22), the court authorized the chapter 7 trustee to retain the Suntag Law Firm as counsel for the estate in this case, with an effective date of employment of November 20, 2013. On February 1, 2014, the Suntag Law Firm merged with the law firm

Herum\Crabtree, to become HCS. The court authorized the chapter 7 trustee to employ HCS as counsel for the estate by order entered July 15, 2014 (Dkt. 45), with an effective date of employment of May 26, 2014. The applicant now seeks compensation for services rendered and costs incurred during the period of November 20, 2013, through and including November 18, 2014. The requested fees and costs are approved in full. The court notes that it would ordinarily reduce the applicant's fees because the applicant has stated an intention to bill for a court appearance on this matter. This matter is being resolved without oral argument and will therefore not be called for hearing on November 18, 2014. No appearance is required. However, because the applicant has already substantially reduced its fees and costs from the actual work performed as evidenced by the applicant's billing records and the application, the requested fees are approved in full. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.