

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

December 9, 2014 at 9:32 A.M.

1. [14-21064](#)-B-13 IVAN BRENT MOTION FOR SUMMARY JUDGMENT
 [14-2160](#) UST-1 10-31-14 [[17](#)]
U.S. TRUSTEE V. VAUGHN

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

The motion is dismissed without prejudice.

Local Bankruptcy Rule 7056-1(a) requires that each motion for summary judgment or partial summary judgment be accompanied by "Statement of Undisputed Facts" which "shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon to establish that fact." The movant did not file a statement of undisputed facts with the motion, as required by LBR 7056-1(a). Failure to comply with the court's local rules is grounds for, inter alia, dismissal of the motion.

The court will issue a minute order.

2. [14-20707](#)-B-7 JOSEPH LANGI MOTION FOR ENTRY OF DEFAULT
[14-2135](#) JUDGMENT
SPRINGLEAF FINANCIAL SERVICES, 11-7-14 [[29](#)]
INC. V. LANGI

Tentative Ruling: The motion is granted. The plaintiff Springleaf Financial Services, Inc. ("Springleaf") shall have judgment stating that it shall recover from the defendant, debtor Joseph Langi, the sum of \$4,753.00, with said amount to be deemed nondischargeable pursuant 11 U.S.C. § 523(a)(2)(A). Except as so ordered, the motion is denied.

By this motion Springleaf seeks entry of default judgment against the debtor on Springleaf's claims for a money judgment for damages incurred in connection with breach of a loan agreement, with said judgment to be deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Federal Rule of Civil Procedure 55(b) permits a court, following default by a defendant, to enter default judgment in plaintiff's favor. See Playboy

Enters. Int'l, Inc. v. Mutter, 314 F.Supp.2d 1037, 1038-39 (D.Nev.2004); RingCentral, Inc. v. Quimby, 711 F.Supp.2d 1048, 1057 (N.D.Cal.2010) ("Pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, the court may enter a default judgment where the clerk, under Rule 55(a), has previously entered the party's default based upon failure to plead or otherwise defend the action."). "A failure to make a timely answer to a properly served complaint will justify the entry of a default judgment." Benny v. Pipes, 799 F.2d 489, 492 (9th Cir.1986). A district court has discretion to grant relief upon an application for default judgment. See Fed.R.Civ.P. 55(b), Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.1980). Upon entry of default, "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977). However, the motion must also demonstrate that the plaintiff is entitled to judgment as a matter of law. "[E]ntry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." In re Meyer, 373 B.R. 84, 88 (9th Cir. BAP 2007).

The focus of a motion for default judgment is on "the sufficiency of the complaint and its allegations to support [a] judgment." Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). Thus, "facts which are not established by the pleadings of the prevailing party, or claims which are not well-pleaded, are not binding and cannot support the judgment." Id., citing Nishimatsu Construction Co. v. Houston National Bank, 515 F.2d 1200 (5th Cir. 1975).

In this case the court finds that Springleaf's complaint sufficiently pleads a claim for breach of a loan agreement and for nondischargeability under 11 U.S.C. § 523(a)(2)(A). The applicable elements for a claim for fraud under § 523(a)(2)(A) are: 1.) misrepresentation, fraudulent omission or deceptive conduct by the debtor, 2.) knowledge of the falsity or deceptiveness of his statement or conduct, 3.) an intent to deceive, 4.) justifiable reliance by the creditor on the debtor's statement or conduct, and 5.) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct. Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (9th Cir. BAP 2009).

The complaint alleges that on or about November 22, 2013, the debtor entered into a loan agreement pursuant to which Springleaf loaned the debtor \$4678. The loan was secured by a computer, two televisions and an air compressor. Springleaf alleges that the debtor made one payment on the loan after he entered into it and thereafter defaulted in payments, filing his parent bankruptcy case on January 27, 2014, sixty-six days after entering into the loan. Springleaf alleges that by entering into the loan agreement the debtor represented an intention to make the payments pursuant to the terms of the loan and that he was financially capable of making said payments.

Springleaf also alleges that the debtor was cognizant of the fact that he did not have the funds available to repay the loan, that the debtor had specific intent to defraud the plaintiff and did not ever intend to repay the plaintiff and that the debtor intended for the plaintiff to rely on his misrepresentations. Springleaf alleges that it reasonably relied on the debtor's misrepresentations that the loan would be repaid pursuant to the agreed-upon terms. Springleaf has also presented evidence in the form of the declaration of its representative Kellie Meagher (Dkt. 33),

in which she states that Springleaf has suffered damages resulting from the debtor's breach of the loan agreement in the amount of \$4,753.00.

The court will issue a minute order granting the motion. Counsel for the Springleaf shall submit a proposed form of judgment which states that Springleaf shall recover from the defendant, debtor Joseph Langi, the sum of \$4,753.00, with said amount to be deemed nondischargeable pursuant 11 U.S.C. § 523(a)(2)(A).

3. [14-27089](#)-B-7 JOSEPH ELFAR MOTION TO QUASH
SNM-1 11-10-14 [[40](#)]

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

The motion is removed from the calendar. The movant withdrew the motion on December 1, 2014 (Dkt. 46).

4. [13-30690](#)-B-11 WILLIAM PRIOR MOTION TO EXTEND EXCLUSIVITY
HLC-5 PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT
FILED BY DEBTOR
11-11-14 [[124](#)]

Tentative Ruling: The opposition filed by Tri Counties Bank ("TCB") is overruled. The motion is granted to the extent set forth herein. The period of exclusivity for the debtor to file a plan pursuant to 11 U.S.C. § 1121(b) and (c)(2) is extended to and including February 16, 2015. The period of exclusivity for the debtor to obtain acceptances of a timely filed plan is extended to and including April 17, 2015. Except as so ordered, the motion is denied.

11 U.S.C. § 1121(d) permits the court to extend the exclusivity periods described in 11 U.S.C. § 1121(b) and (c) for "cause." To determine whether there is cause to extend or reduce exclusivity, courts typically apply a number of non-exclusive factors, which include:

1. The size and complexity of the case;
2. The necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
3. The existence of good faith progress toward reorganization;
4. The fact that the debtor is paying its bills as they come due;
5. Whether the debtor has demonstrated reasonable prospects for filing a viable plan;
6. Whether the debtor has made progress in negotiating with its

creditors;

7. The amount of time which has elapsed in the case;

8. Whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and

9. Whether an unresolved contingency exists.

In re Dow Corning, Co., 208 B.R. 661, 664 (E.D. Mich. 1997); see also In re Express One International, Inc., 194 B.R. 98, 100 (E.D. Tex. 1996). These factors are recognized by the Ninth Circuit Bankruptcy Appellate Panel. See Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.), 282 B.R. 444, 452 (9th Cir.BAP2002) ("A variety of matters probative to § 1121(d) 'cause' are standardly applied."). "A decision whether to extend or terminate exclusivity for cause is within the discretion of the bankruptcy court and is fact-specific." In re Adelphia Communications Corp., 352 B.R. 578, 586 (Bankr.S.D.N.Y.2006).

In this case, the court finds cause for extension of the exclusivity period because the current exclusivity deadline of November 11, 2014, expired only eleven days after the court issued a memorandum decision and order dismissing Prior v. Tri Counties Bank, et al., adversary proceeding no. 13-2288-B. TCB is the largest secured creditor in the bankruptcy case. The resolution of the adversary proceeding, which involved a complex analysis of the impact of Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) on the debtor's ability to assert a setoff against TCB's secured claim in this case, was significant to the determination of the extent and validity of TCB's secured claim in this case. The resolution of the adversary proceeding was therefore also significant to the debtor's ability to formulate and propose a plan. The debtor has previously sought three extensions of exclusivity while the court considered dispositive motions pending in the adversary proceeding, and each time TCB filed a statement of non-opposition to the request. The court finds that with the adversary proceeding resolved it is appropriate to grant the debtor an extension of exclusivity to formulate a plan in light of the dismissal of the adversary proceeding. The court does not find any evidence in the record that the debtor is seeking an extension to pressure TCB or other creditors to submit to reorganization demands. The foregoing constitutes cause for extension of exclusivity.

The court will issue a minute order.

5. [09-24901](#)-B-7 LUIGI IPPOLITO
ACK-1

MOTION TO AVOID LIEN OF PREMIER
COMMUNITY CREDIT UNION
11-17-14 [[23](#)]

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.

6. [13-33107](#)-B-7 BUTTE STEEL & MOTION FOR COMPENSATION FOR
BLL-8 FABRICATION, INC. BYRON LEE LYNCH, TRUSTEE'S
ATTORNEY
11-11-14 [[134](#)]

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 an interim basis in the amount of \$11,340.00 in fees and \$722.59 in costs, for a total of \$12,112.59 in fees and costs, for the period March 1, 2014, through and including October 31, 2014, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on November 8, 2013 (Dkt. 16), the court authorized the chapter 7 trustee to retain the applicant as counsel for the chapter 7 trustee in this case, with an effective date of employment of October 24, 2014. By order entered April 10, 2014, the court approved the applicant's first interim request for compensation in the amount of \$16,450.00 in fees and \$377.65 in costs, for the period October 24, 2013, through and including February 28, 2014. The applicant now seeks compensation for services rendered and costs incurred during the period March 1, 2014, through and including October 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.

7. [13-27008](#)-B-11 ALBERTO GONZALEZ MOTION FOR COMPENSATION FOR
JHH-11 JUDSON H. HENRY, DEBTOR'S
ATTORNEY
11-4-14 [[193](#)]

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

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$3000.00 in fees and \$180.39 in costs, for a total of \$3180.39 in fees and costs, for the period July 16, 2014, through and including October 14, 2014, payable as an administrative expense pursuant to section 4.2 of the debtor's confirmed chapter 11 plan. Except as so ordered, the motion is denied.

By order entered on August 15, 2014 (Dkt. 170), the court authorized the debtor to retain the applicant as counsel, with an effective date of employment of July 28, 2014. By order entered October 15, 2014, the court confirmed the debtor's Chapter 11 plan, which provides that

administrative expense claims shall be paid on the Effective Date of the plan (as that term is defined therein), or when approved by the court, whichever is later. The applicant now seeks compensation for services rendered and costs incurred during the period July 16, 2014, through and including October 14, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

Although the application requests approval of the requested fees on an interim basis, the court has approved the application on a first and final basis because the court's order approving the applicant's employment capped his fees at \$3,000.00, which is the amount of fees requested in the application.

The court will issue a minute order.

8. [14-27621](#)-B-7 MARTHA HERNANDEZ MOTION TO AVOID BANK LEVY AND
UND-1 PERMITTING TURNOVER OF LEVIED
FUNDS
11-7-14 [[32](#)]

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 Creditors Specialty Service, Inc. created pursuant to Cal. Civ. Proc. Code § 697.710 by the levy of a writ of execution by the Solano County Sheriff's Office (the "Sheriff") on funds (the "Funds") in the amount of \$3193.97 is avoided as against the Funds. The Sheriff is authorized to turn the funds over to the debtor. Except as so ordered, the motion is denied.

The Funds have a value of \$3193.97 as of the date of the filing of the petition. The debtors claimed the property as entirely exempt under California Code of Civil Procedure Section 703.140(b)(5). The respondent holds a judicial lien created by levy on the Funds pursuant to a writ of execution. 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 Funds and its fixing is avoided.

The court will issue a minute order.

9. [14-28521](#)-B-7 JOHN DUDLEY MOTION TO EXTEND DEADLINE TO
HSM-2 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
11-17-14 [[34](#)]

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.

10. [14-23526](#)-B-7 PEGGY DEAN MOTION TO EXTEND TIME
HSM-5 10-31-14 [[43](#)]

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. 4003(b)(1), the deadline for the chapter 7 trustee to file an objection to the debtor's claims of exemption is extended to and including January 30, 2015. Except as so ordered, the motion is denied.

The court will issue a minute order.

11. [14-21634](#)-B-7 NANCY RICK MOTION FOR COMPENSATION BY THE
DNL-3 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM TRUSTEE'S
ATTORNEY(S)
11-10-14 [[39](#)]

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 \$7127.50 in fees and \$33.19 in costs, for a total of \$7160.69 in fees and costs, for services rendered between March 19, 2014, and November 3, 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 February 21, 2014. 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 19, 2014. The applicant now seeks approval of compensation in the amount of \$7127.50 in fees and \$33.19 in costs, for a total of \$7160.69 in fees and costs, for services rendered between March 19, 2014, and November 3, 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.

12. [09-28058](#)-B-7 GREGORY ABBETT MOTION TO APPROVE INTERIM
DNL-19 DISTRIBUTIONS TO CREDITORS
11-10-14 [[574](#)]

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

The motion is granted. The Stipulation for Interim Distributions filed as Exhibit "B" to the motion (Dkt. 577 at 35) (the "Stipulation") is approved and is binding among the parties thereto. The chapter 7 trustee is authorized to distribute funds held by the estate in the manner set forth in the Stipulation. Except as so ordered, the motion is denied.

The court will issue a minute order.

13. [13-33458](#)-B-7 ROY ARRIAGA MOTION TO COMPROMISE
TAA-5 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DONNA ARGE
11-3-14 [[54](#)]

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

The motion is granted and the chapter 7 trustee is authorized to enter into and perform in accordance with the Settlement Agreement (the "Agreement") filed as Exhibit 1 to the motion (Dkt. 56). Except as so ordered, the motion is denied.

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

The trustee alleges without dispute that the Agreement is fair and equitable. The Agreement, which determines the allowed amount of the claim of creditor Donna Arge, significantly reduces the allowed amount of Arge's claim and resolves a factually intensive dispute between Arge and the trustee regarding the validity of the claim. By entering into the Agreement the trustee avoids the potentially time-consuming and expensive litigation. 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). The trustee has carried his burden of persuading the court that the proposed Agreement is fair and equitable.

The court will issue a minute order.

14. [13-20964](#)-B-7 CORWIN/BILLIE CORNELL

MOTION TO REOPEN CHAPTER 7
BANKRUPTCY CASE
11-24-14 [[22](#)]

CASE CLOSED 5/17/13

Tentative Ruling: The motion is granted in part and denied without prejudice in part. The debtors' request to reopen the bankruptcy case is granted. The bankruptcy case shall be, and is reopened. A chapter 7 trustee need not be reappointed. The debtors' request for avoidance of a judgment lien in favor of Discover Bank, N.A. is denied without prejudice.

11 U.S.C. § 350(b) provides that a case may be reopened to administer assets, accord relief to the debtor, or for other cause. The debtors' intention to avoid a prepetition judicial lien constitutes sufficient cause to reopen the case.

However, LBR 5010-1(b) provides that a motion to reopen the case shall contain a statement of the grounds for reopening the case, but shall not contain a request for any other relief. LBR 5010-1(c) requires that requests for any relief other than reopening, including relief based on the grounds for reopening the case, shall be made in separate motions or adversary proceedings which may be filed concurrently with the motion to reopen. The debtors have not complied with LBR 5010-1, as the present motion requests relief other than reopening the case, i.e., avoidance of the alleged judicial lien in favor of Discover Bank.

Furthermore, to the extent that the motion seeks to avoid the alleged judicial lien, it is not supported any evidence. The following elements are required for avoidance of a judicial lien pursuant to 11 U.S.C. § 522(f).

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

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

In this case, the debtors have not filed with the motion evidence of the existence of a judicial lien in the form of a recorded abstract of judgment, nor have they filed with the motion evidence of the value of the Property, the amount of obligations secured by unavoidable liens encumbering the Property, or their claim of exemption in the Property. The unsworn allegations in the motion are not evidence which satisfies the foregoing elements. Furthermore, it is not incumbent on the court to

search through the docket to find evidence, such as that contained in the debtors' sworn schedules, which would support the motion.

The court will issue a minute order.

15. [14-24824](#)-B-7 JOHN/JEANNETTE NOTMAN MOTION TO COMPEL
ADJ-5 11-20-14 [[126](#)]

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.

16. [14-26562](#)-B-7 ANTHONY NOONIS AND CINDY MOTION TO APPROVE STIPULATION
[14-2269](#) GARCIA-NOONIS MPP-1 TO STAY
TLC MANAGEMENT CARE, LLC ET AL 11-3-14 [[12](#)]
V. NOONIS

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

The motion is granted. The Stipulation to Stay Plaintiffs' Adversary Proceeding filed on November 3, 2014, (Dkt. 11) (the "Stipulation") is approved. Pursuant to the Stipulation, the adversary proceeding is stayed pending further order of the court.

The court will issue a minute order.

17. [13-32865](#)-B-7 APNA INVESTMENTS, INC., MOTION FOR COMPENSATION FOR
DNL-6 A CALIFORNIA CORPORATION GONZALES AND SISTO, LLP,
ACCOUNTANT(S)
11-18-14 [[149](#)]

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. [11-31467](#)-B-7 PRIVATE INDUSTRY COUNCIL MOTION FOR COMPENSATION FOR
MPD-17 OF BUTTE COUNTY MICHAEL P. DACQUISTO, TRUSTEE'S
ATTORNEY(S)
11-18-14 [[146](#)]

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.

19. [11-31467](#)-B-7 PRIVATE INDUSTRY COUNCIL MOTION FOR COMPENSATION FOR
MPD-18 OF BUTTE COUNTY WEST AUCTIONS, AUCTIONEER(S)
11-18-14 [[152](#)]

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

20. [14-29267](#)-B-11 MOHAMMAD ABBASZADEH MOTION TO CONVERT CASE TO
UST-2 CHAPTER 7 OR MOTION TO DISMISS
CASE
10-23-14 [[12](#)]

Tentative Ruling: This motion is unopposed. In this instance, because the debtor is pro se, the court issues the following tentative ruling.

The motion is granted, and this case is dismissed.

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

First, under section 1112(b)(2), the court shall not convert or dismiss the case, even if the movant establishes cause, if the court determines that specifically identified unusual circumstances exist and such circumstances establish that conversion or dismissal would not be in the best interests of creditors and the estate.

Second, under section 1112(b)(1), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the court determines that a trustee should be appointed under section 1104(a). Section 1104(a)(3) states that, rather than converting or dismissing the case, the court may appoint a chapter 11 trustee if doing so would be in the best interests of creditors and the estate.

Third, under section 1112(b)(2), if cause is established and no specifically identified unusual circumstances are established, the court must convert or dismiss the case for cause unless the debtor or another party in interest opposing dismissal or conversion establishes the requirements of section 1112(b)(2)(A) and (B). Under section 1112(b)(2), the debtor or other opposing party in interest must establish that:

(1) There is a reasonable likelihood that a plan will be confirmed within the time limitations specified in the subsection;

(2) The grounds for converting or dismissing the case include an act or omission by the debtor other than substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; and

(3) There exists a reasonable justification for the act or omission demonstrating cause to dismiss the case and the act or omission will be cured within a reasonable time fixed by the court.

7 Lawrence P. King, et. al. Collier on Bankruptcy § 1112.04 (15th ed. rev. 2007).

Section 1112(b)(4) sets forth a non-exhaustive list of examples of "cause."

The court finds, for the reasons stated in the motion, that the UST has established cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(E), (F) and (H). The UST alleges without dispute, and is readily apparent from the court's docket of this case and that the debtor did not serve the court's Order to (1) Disclose Single Asset Real Estate/Small Business Case Status; (2) File Status Report; and (3) Attend Preliminary Status Conference (the "PSC Order") (Dkt. 11) as required by the PSC order by October 10, 2014, the debtor did not file a monthly operating report for September, 2014, on or before October 14, 2014, as required by LBR 2015-1 and the debtor did not attend the initial meeting of creditors held on October 23, 2014.

The court further finds that the debtor has not established pursuant to Section 1112(b)(2) that, even though cause exists, the case should not be dismissed. The debtor has failed to establish any of the requirements of section 1112(b)(2)(A) or (B).

The court finds that dismissal is in the best interests of creditors and the estate because there appear to be no non-exempt, unencumbered assets of the estate that could be administered for the benefit of creditors in a chapter 7 case.

The court will issue a minute order.

21. [11-33768](#)-B-7 THOMAS/ARACELI MATTHEWS
RM-3

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS (AMERICAN
EXPRESS CENTURION BANK)
10-29-14 [[39](#)]

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 San Joaquin County, Document No. 2011-064972, is avoided as against the real property located at 1890 Petrig Court, Tracy, California.

The subject real property has a value of \$221,000.00 as of the date of the petition. The unavoidable liens total \$167,747.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730(a)(3), under which they exempted \$55,253.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

22.	<u>13-31022</u> -B-7	KATHLEEN DEEGAN	MOTION FOR SUMMARY JUDGMENT
	<u>13-2363</u>	BJI-1	11-7-14 [<u>46</u>]
	NOBACH V. DEEGAN		

Tentative Ruling: None.

23.	<u>13-35149</u> -B-7	COLBY ELRICK	MOTION FOR RELIEF FROM
	<u>14-2072</u>	WBH-3	SCHEDULING ORDER AND/OR MOTION
	HODGES V. ELRICK		TO MODIFY SCHEDULING ORDER
			10-31-14 [<u>30</u>]

Tentative Ruling: The motion is granted to the extent set forth herein. Pursuant to the Federal Rule of Bankruptcy Procedure 7016, incorporating Federal Rule of the Civil Procedure 16(b), the scheduling order entered May 7, 2014 (Dkt. 14) (the "Scheduling Order") is modified as follows: the close of non-expert discovery in this adversary proceeding is extended to and including December 9, 2014. All dates in the Scheduling Order that are inconsistent with the foregoing are vacated. The Scheduling Order, as modified, remains in full force and effect. Except as so ordered, the motion is denied.

Through this motion, plaintiff W.H. Bradford Hodges (the "Plaintiff") seeks a modification to the Scheduling Order such that the close of non-expert discovery in this adversary proceeding is extended from October 31, 2014, to and including December 9, 2014, so that Plaintiff's Motion to Deem Admitted All Matters in Plaintiff's Requests for Admissions and Motion for Sanctions (Dkt. 16) (the "Motions") can be timely heard elsewhere on today's calendar. The Plaintiff alleges that there is good cause to modify the Scheduling Order in this instance based on the following. First, defendant Colby Kline Elrich (the "Defendant") has allegedly failed to participate in discovery in this case. On August 15, 2014, the Plaintiff served on the Defendant his Requests for Admissions

(Set One), Requests for Production (Set One), and Special Interrogatories (Set One), and requested that the Defendant respond on or before September 19, 2014. The Defendant failed to do so, and on September 22, 2014, the Plaintiff sent a meet and confer letter to the Defendant which granted the Defendant an extension until October 3, 2014, to respond to the foregoing discovery requests. The Defendant again failed to comply.

Second, after making his discovery requests, the Plaintiff alleges that he had insufficient time to set the Motions for hearing prior to the expiration of the original non-expert discovery period.

Finally, the Plaintiff claims that he has been diligent in seeking discovery from the Defendant in this case. Not only did he submit certain requests for production on two separate occasions, but he also attempted to extend the close of the non-expert discovery deadline via an ex parte motion to continue filed October 14, 2014 (Dkt. 22), which was denied by order entered October 27, 2014 (Dkt. 27).

In the absence of opposition, the court finds that the Plaintiff has shown good cause justifying modification of the Scheduling Order. The court takes no position as to whether this motion would have been granted in the presence of opposition.

The court will issue a minute order granting the motion and a separate order modifying the Scheduling Order.

24.	<u>13-35149</u> -B-7 COLBY ELRICK <u>14-2072</u> WBH-1 HODGES V. ELRICK	CONTINUED MOTION TO DEEM ADMITTED ALL MATTERS IN PLAINTIFF'S REQUESTS FOR ADMISSIONS AND/OR MOTION FOR SANCTIONS 10-14-14 [<u>16</u>]
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Tentative Ruling: Plaintiff W.H. Bradford Hodges (the "Plaintiff")'s motion is granted in part and dismissed as moot in part. The Plaintiff's request to have the information contained in his Requests for Admissions (Set One) (Dkt. 34, pp.50-57) ("Requests for Admissions") deemed admitted by defendant Colby Kline Elrick (the "Defendant") is dismissed as moot by operation of Federal Rule of Civil Procedure 36(a)(3). Pursuant to Federal Rules of Civil Procedure 37(b)(2)(A)(ii), Defendant is prohibited from introducing in any further proceedings in this adversary proceeding any evidence to contradict the deemed admission of the matters addressed in the Requests for Admissions or that could have been provided in response to the Plaintiff's Requests for Production of Documents (Set One) (Dkt. 34, pp.41-49) ("Requests for Production") and Special Interrogatories (Set One) (Dkt. 34, pp.60-66) ("Special Interrogatories"). The Plaintiff's request for other monetary sanctions including, inter alia, reasonable expenses incurred in bringing the instant motion is denied. Except as so ordered, the motion is denied.

The Plaintiff commenced the above-captioned adversary proceeding by filing a complaint against the Defendant on March 6, 2014. A status conference was held on May 7, 2014, at 9:30 a.m. and concluded on that same day. On May 7, 2014, the court issued a scheduling order (Dkt. 14) setting forth the applicable discovery procedures for this case. The

Plaintiff alleges without dispute and provides evidence that on August 14, 2014, he caused to be served on the Defendant via overnight mail the Requests for Admissions, Requests for Production, and Special Interrogatories, directing that the Defendant serve his responses on or before September 19, 2014. The Plaintiff further alleges without dispute that, to date, he has failed to receive any response to these requests. Additionally, the Plaintiff asserts that on September 22, 2014, he sent to the Defendant via certified mail a letter to meet and confer regarding the Defendant's failure to respond to previous discovery requests. The meet and confer letter granted the Defendant an additional ten (10) days to respond to the Plaintiff's discovery requests, with the Defendant's responses being due on or before October 3, 2014. To date, the Defendant has not responded to the meet and confer letter, which necessitated the instant motion.

The Plaintiff's request to deem admitted the information requested in the Requests for Admissions is dismissed as moot. Pursuant to Federal Rule of Civil Procedure 36(a)(3), incorporated by Federal Rule of Bankruptcy Procedure 7036, "a matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3). The Requests for Admissions were served on August 14, 2014. Thirty days thereafter was September 13, 2014. Accordingly, because the Defendant failed to respond to the Requests for Admissions, the matters contained therein were deemed admitted by the Defendant at 12:01 a.m. on September 14, 2014. The Plaintiff therefore already has the relief he seeks through this part of the motion.

As to the Requests for Production and Special Interrogatories, Federal Rule of Civil Procedure 37(d)(1)(A)(ii), incorporated by Federal Rule of Bankruptcy Procedure 7037, provides that the court may order sanctions if "a party, after being properly served with interrogatories under Rule 33 or a request for inspect under Rule 34, fails to serve its answers, objections, or written response." Fed. R. Civ. P. 37(d)(1)(A)(ii). The types of sanctions may include any of the orders listed in Federal Rule of Civil Procedure 37(b)(2)(A)(i)-(vi). Fed. R. Civ. P. 37(d)(3). In this instance, the court finds that the Defendant's failure to respond to the Requests for Production and Special Interrogatories warrants sanctions under Federal Rule of Civil Procedure 37(b)(2)(A)(ii), and hereby orders that the Defendant is prohibited from introducing in any further proceedings in this adversary proceeding any evidence to contradict the deemed admissions of the matters addressed in the Requests for Admissions or that could have been provided in response to the Requests for Production and Special Interrogatories.

The Plaintiff's motion for an award of monetary sanctions is denied because he has not provided evidence of any specific damages.

The court will issue a minute order.

25. [13-22068](#)-B-7 JOHN/AMY SPITHORST
DNL-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM
TRUSTEE'S ATTORNEY(S)
11-13-14 [[75](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

26. [12-41873](#)-B-7 IMAD OWEITI
DCR-2

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
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 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, N.A., recorded in the official records of Sacramento County, Book Number 20110722, is avoided as against the real property located at 5231 Gibbons Drive, Carmichael, California 95608 (the "Property").

The Property had a value of \$82,696.00 as of the date of the petition. The unavoidable liens total \$68,232.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$14,464.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

27. [12-41873](#)-B-7 IMAD OWEITI
DCR-3

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
10-21-14 [[35](#)]

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 Wells Fargo Bank, N.A., recorded in the official records of Sacramento County, Book Number 20120709, is avoided as against the real property located at 5231 Gibbons Drive, Carmichael, California 95608 (the "Property").

The Property had a value of \$82,696.00 as of the date of the petition.

The unavoidable liens total \$68,232.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$14,464.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

28. [12-41873](#)-B-7 IMAD OWEITI MOTION TO AVOID LIEN OF
DCR-4 AMERICAN EXPRESS CENTURION BANK
10-21-14 [[47](#)]

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 Sacramento County, Book Number 20110714, is avoided as against the real property located at 5231 Gibbons Drive, Carmichael, California 95608 (the "Property").

The Property had a value of \$82,696.00 as of the date of the petition. The unavoidable liens total \$68,232.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which he exempted \$14,464.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

29. [14-23974](#)-B-7 EDWARD/ELIZABETH SCHLEGEL MOTION TO APPROVE AUCTIONEER'S
DMW-3 REPORT AND/OR MOTION FOR
COMPENSATION FOR NORTHSTATE
AUCTIONS, INC., AUCTIONEER(S)
10-31-14 [[46](#)]

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 Federal Rule of Bankruptcy Procedure 2016, the application is approved on a final basis in the amount of \$944.50 in auctioneer's commissions and expenses for services rendered and costs incurred during the period of September 30, 2014, through and including October 2, 2014. The foregoing shall be payable to NorthState Auctions,

Inc. ("NorthState") as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The debtors commenced the above-captioned case by filing a voluntary petition under chapter 7 on April 17, 2014 (Dkt. 1). By order entered August 22, 2014 (Dkt. 41), the court authorized the trustee to retain NorthState as auctioneer for the bankruptcy estate. NorthState is to receive a commission of twelve percent (12.00%) of the gross sale proceeds, plus any extraordinary expenses incurred for selling certain personal property of the debtors.

The trustee now seeks approval of commissions earned and expenses incurred by NorthState during the period of September 30, 2014, through and including October 2, 2014. As set forth in the application, the approved commissions and expenses are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

30. [13-34976](#)-B-11 CORINNE HUTTLINGER MOTION TO EMPLOY NORTH LAKE
TMP-11 TAHOE FINANCIAL SERVICES, LLCV
AS ACCOUNTANT(S)
11-12-14 [[150](#)]

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.

31. [14-22277](#)-B-7 CURTIS WAHL MOTION TO AVOID LIEN OF
DBJ-3 DISCOVER BANK
11-17-14 [[34](#)]

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

The motion is denied without prejudice.

The debtor has failed to establish the existence of a judicial lien encumbering the subject real property. To avoid a nonconsensual judicial lien, the debtor must satisfy the following elements:

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

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24

F.3d 247 (9th Cir. 1994) (table). The debtor has not shown the existence of a judicial lien encumbering the subject real property. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). Here, the court acknowledges the copy of the abstract of judgment attached as Exhibit "A" to the motion (Dkt. 37, pp.2-3). However, the debtor has attached no evidence indicating that the abstract of judgment was properly recorded with the county recorder. The debtor's assertions in both the motion and supporting declaration that the abstract of judgment was recorded in Butte County, without more, is insufficient evidence to establish the existence of a judicial lien under California law. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

32. [08-32280](#)-B-7 HEAVEN INVESTMENT MOTION TO COMPROMISE
DNL-5 HOLDING CORP. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SELECT REV.
MTG., LLC
11-18-14 [[316](#)]

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.

33. [08-32280](#)-B-7 HEAVEN INVESTMENT MOTION FOR COMPENSATION FOR
DNL-6 HOLDING CORP. GONZALES AND SISTO LLP,
ACCOUNTANT(S)
11-18-14 [[321](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

34. [08-32280](#)-B-7 HEAVEN INVESTMENT MOTION FOR COMPENSATION BY THE
DNL-7 HOLDING CORP. LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
11-18-14 [[311](#)]

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.

35. [14-27280](#)-B-7 GERENE RODGERS
BHS-1

MOTION TO SELL
11-6-14 [[19](#)]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to sell the estate's interest in real property located at 3666 Stoneglen South, Richmond, California 94806 (APN 405-460-022) (the "Property") in an "as-is, where-is" condition to Paula Chavez for \$186,000.00 on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached to the motion as Exhibit "A" (Dkt. 22, pp.2-10). The trustee is authorized to pay all liens on the Property through escrow. The trustee is authorized to execute all documents necessary to complete the approved sale. The trustee is further authorized to reimburse himself, through escrow, in the amount of \$455.00 for homeowner's association document fees he paid out of pocket in advance of the approved sale. The net 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. Except as so ordered, the motion is denied.

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

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

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

36. [14-27280](#)-B-7 GERENE RODGERS
BHS-2

MOTION TO EMPLOY BARRY H.
SPITZER AS TRUSTEE'S ATTORNEY
AND MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY
11-6-14 [[25](#)]

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. § 327(a) and Federal Rule of Bankruptcy Procedure 2014, the trustee's request to employ the Law Office of Barry H. Spitzer ("Spitzer") as counsel for the trustee for the purposes more fully described in the motion is granted. Pursuant to 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016, the trustee is authorized to pay Spitzer a flat fee of \$3,500.00 as a chapter 7 administrative expense, payable upon completion of the services for which Spitzer is employed. Except as so ordered, the motion is denied.

The court finds that Spitzer is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court finds that the approved flat fee is reasonable compensation for actual, necessary and beneficial services.

Counsel for the trustee shall submit an order approving employment of Spitzer that conforms to the foregoing ruling.

37. [14-27280](#)-B-7 GERENE RODGERS MOTION TO EMPLOY STEPHANIE T. DAVIS AS REALTOR AND MOTION FOR COMPENSATION FOR STEPHANIE T. DAVIS, REALTOR
BHS-3 11-6-14 [[31](#)]

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. § 327(a) and Federal Rule of Bankruptcy Procedure 2014, the trustee's request to employ Stephanie T. Davis ("Ms. Davis") as realtor for the trustee for the purpose of valuing, marketing, and selling real property located at 3666 Stoneglen South, Richmond, California 94806 is granted. Pursuant to 11 U.S.C. § 330 and Federal Rule of Bankruptcy Procedure 2016, the trustee is authorized to pay Ms. Davis a commission of \$6,000.00 as a chapter 7 administrative expense, payable upon completion of the services for which Ms. Davis is employed. Except as so ordered, the motion is denied.

The court finds that Ms. Davis is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The court finds that the approved commission is reasonable compensation for actual, necessary and beneficial services.

Counsel for the trustee shall submit an order approving employment of Ms. Davis that conforms to the foregoing ruling.

38. [13-30482](#)-B-7 CRAIG/CINDY COCKERELL MOTION TO ABANDON
DMW-2 10-31-14 [[90](#)]

Tentative Ruling: Pursuant to 11 U.S.C. § 554(a), the motion is granted in part, and the estate's interest in the real properties more fully described in the motion and attached Accountant's Analysis of Real Property Values Post Sale, Taxes and Liens (Dkt. 92), as well as the personal properties which have been claimed as exempt on Schedule C (collectively, the "Properties"), are deemed abandoned. The trustee's request to abandon those assets repurchased by the debtors under docket control number DMW-1 (the "Purchased Assets") is denied. Except as so ordered, the motion is denied.

The trustee alleges without dispute and provides evidence that the net value to the estate of each of the real properties included in the Properties is negative after considering the cost of sale, tax issues, recapture on depreciation, satisfaction of liens, and repairs. The

trustee further alleges without dispute that the personal properties that are included in the Properties have been claimed as exempt on Schedule C and therefore have little or no value to the estate. The court finds that the trustee has satisfied his burden of establishing that the Properties are of inconsequential value and benefit to the estate. In re Viet Vu, 245 B.R. 644, 647 (9th Cir. BAP 2000).

The request to abandon the Purchased Assets is denied because the trustee can only abandon property of the estate. 11 U.S.C. § 554(a). Assets that have been sold by the trustee are not property of the estate.

The court will issue a minute order.

39. [13-30482](#)-B-7 CRAIG/CINDY COCKERELL MOTION TO SELL
DMW-3 11-12-14 [[94](#)]

Tentative Ruling: This motion was filed under LBR 9014-1(f)(1), but gave only twenty-seven days notice rather than the required twenty-eight days. The court treats the motion as filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following 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 the seven real properties more fully described in the motion in an "as-is, where-is" condition to Craig Steven Cockerell and Cindy Louise Cockerell for \$40,000.00 on the terms set forth in the Purchase and Sale Agreement filed as Exhibit "B" to the motion (Dkt. 96, pp.3-7). The trustee is authorized to execute all documents necessary to effectuate the sale. The net 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. 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

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

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

40. [14-28883](#)-B-7 TIFFANY PELTON MOTION TO AVOID LIEN OF FORD
ADR-1 MOTOR CREDIT COMPANY, LLC
11-21-14 [[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.

41. [14-25691](#)-B-7 CHRISTOPHER/GALINA LOOSA
DMW-1

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CHRISTOPHER M.
LOOSA AND GALINA V. LOOSA
11-3-14 [[15](#)]

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

The motion is granted, and the trustee is authorized to enter into and perform in accordance with the terms set forth in the Settlement Agreement attached to the motion as Exhibit "A" (Dkt. 17, pp.2-3) (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 settle a dispute with the debtors regarding the estate's interest in the debtors' 2013 federal and state income tax refund, without the delay, expense, or inconvenience associated with litigation. Additionally, the Agreement will result in a quicker distribution to 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.

42. [13-20595](#)-B-7 STEPHEN/DIANA PATTERSON
DMW-2

MOTION TO SELL
10-31-14 [[30](#)]

Tentative Ruling: The conditional non-opposition of Wells Fargo Bank, N.A. is overruled. The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to sell the estate's interest in real property located at 18377 Penn Valley Road, Penn Valley, California 95946 (APN 21-210-18-000) (the "Property") in an "as-is, where-is" condition to Terry Sanders and Ileen Sanders for \$258,000.00 on the terms set forth in both the California Residential Purchase Agreement and Joint Escrow Instructions and Additional Terms to Residential Purchase Agreement Dated September 2, 2014, attached to the motion as Exhibits "A" (Dkt. 32, pp.2-13) and "B" (Dkt. 32, pp.14-16), respectively. The trustee is authorized to pay all liens on the Property through escrow. The trustee is authorized to execute all documents necessary to complete the approved

sale. The net proceeds of the sale shall be administered for the benefit of the estate. Pursuant to 11 U.S.C. § 330(a), the trustee is authorized to pay a commission of \$12,900.00 to the trustee's real estate broker, Weichert, Realtors - Galster Group ("Galster"). 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 approved by the court at the hearing.

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

The court approved the employment of Galster as broker for the trustee by order entered April 10, 2013 (Dkt. 18). The court finds that the approved commission is reasonable compensation for actual and necessary services rendered to the estate.

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

43.	<u>14-28996</u> -B-7 RONALD/JENNIFER WYLEY GW-1	MOTION TO AVOID LIEN OF CITIBANK, N.A. 10-27-14 <u>19</u>
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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, N.A., recorded in the official records of Placer County, Document Number 2012-0103248-00, is avoided as against the real property located at 6933 Cherry Ridge Circle, Roseville, California 95678 (APN 358-031-003-000) (the "Property").

The Property had a value of \$340,000.00 as of the date of the petition. The unavoidable liens total \$312,196.00. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 704.730(a)(2), under which they exempted \$100,000.00. 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 granting the motion. If the debtors require an order in a form other than the court's minute order, they may submit a proposed "amended civil minute order" after the hearing on the motion.