UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 1, 2016 at 10:00 a.m.

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

2, 3, 5, 9, 10

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 29, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 16, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 22, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO
HCS-9 APPROVE COMPROMISE
1-4-16 [208]

Tentative Ruling: The motion will be granted in part and denied in part.

The trustee requests approval of two settlement agreements between the estate and members of the debtor named as defendants (all except managing member Richard Jones), in a pending adversary proceeding, resolving the fraudulent conveyance claims (under 11 U.S.C. § 544 and 550 and Cal. Civ. Code § 3439.04), objection to claim claims, subordination of claim claims, and breach of fiduciary duty claims against those members. The first three of these claims are asserted also against Sutter Central Valley Hospitals.

Pre-petition, the debtor sold a real property to Sutter for approximately $6.738 million, when the fair market value of the property at that time was allegedly $17.6 million. As Sutter is a nonprofit organization, with authority to bestow certain tax benefits to donors, the debtor's members reaped a tax benefit from the purported undervalued sale of the property. By the foregoing claims, the trustee is seeking to recover the difference in value and sales price of the property, when sold, from Sutter and from the debtor's members, under 11 U.S.C. § 550(a).

The first settlement is between the estate and Joel Elekman, the only managing member that is a defendant in the action. Under that settlement, the trustee will dismiss the four claims against Mr. Elekman in exchange for dismissal of his $458,500 unsecured proof of claim against the estate (POC 6). In addition, Mr. Elekman has agreed not to file further claims against the estate.

The second settlement is between the estate and three nonmanaging members of the debtor, who are defendants in the pending action, including Ron Coleman, Ron Laffins and the Kenneth Haupt Trust, Dated 12/8/91 (via co-trustees Kenneth C. Haupt and Evelyn S. Haupt). Under this settlement, the trustee will dismiss the claims against the nonmanaging members in exchange for: (1) a joint $100,000 payment by the nonmanaging members, (2) the Haupt Trust dismissing its tardy $1,012,235.52 unsecured proof of claim against the estate (POC 17), (3) the nonmanaging members' agreement not to file further claims against the estate, including the Haupt Trust's claim for indemnification based on payment of $16,000 to U.S. Bank on account of guarantees against the debtor's loan with the bank.

The settlement with the nonmanaging members is also conditional on this court approving it as a good faith settlement under Cal. Civ. Pro. Code § 877.6, which provides that:

"*(a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.*

"*(2) In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court. Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.*

"*(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.*

"*(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.*

"*(d) The party asserting the lack of good faith shall have the burden of proof on that issue.*

"*(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.*

"*(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.*

"*(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.*

"*(3) The running of any period of time after which an action would be subject to dismissal pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 shall be tolled during the period of review of a determination pursuant to this subdivision.*"

Sutter opposes the motion, arguing that "the proposed settlements are wholly disproportionate to the settling defendants' culpability, and foreclose Sutter's lawful rights." Sutter is also seeking continuance of the hearing on the motion, to allow "fairer assessment" of the settlements' value. Docket 215 at 1.

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

The settlement with Mr. Elekman will be approved. The court concludes that the Woodson factors balance in favor of approving that compromise. That is, given that Mr. Elekman does not have assets to satisfy any significant judgment against him, given that he will dismiss his $458,500 proof of claim against the estate, given that he has agreed not to file further claims against the estate, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

The court rejects Sutter's opposition to the settlement with Mr. Elekman. Sutter's assertion that the settlement should be based on the proportionate culpability of joint tortfeasors is without merit. The only legal authority proffered by Sutter in support of its "proportionate culpability settlement requirement" for joint tortfeasors, is derived from a California case, Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal. 3d 488, 495 (1985), commenting on Cal. Civ. Pro. Code § 877.

"*The good faith provision of section 877 mandates that the courts review agreements purportedly made under its aegis to insure that such settlements appropriately balance the contribution statute's dual objectives. [FN4 . . . [t]he commissioners' comment to section 4 clearly indicates that the good faith language was added to give the courts occasion to review settlements between a plaintiff and one of several tortfeasors to determine whether they prejudiced the interests of a nonsettling tortfeasor]. 'Lack of good faith encompasses many kinds of behavior. It may characterize one or both sides to a settlement. When profit is involved, the ingenuity of man spawns limitless varieties of unfairness. Thus, formulation of a precise definition of good faith is neither possible nor practicable. The Legislature has here incorporated by reference the general equitable principle of contribution law which frowns on unfair settlements, including those which are so poorly related to the value of the case as to impose a potentially disproportionate cost on the defendant ultimately selected for suit.'*"

Tech-Bilt at 494-95 (citing and quoting River Garden Farms, Inc. v. Superior Court, 26 Cal. App. 3d 986, 997 (1972)); Docket 215 at 4.

"Thus, [Sutter continues,] the court must consider not only the settlor's potential liability to plaintiff, but also its proportionate share of culpability as among all parties alleged to be liable for the same injury."

Docket 215 at 4 (citing TSI Seismic Tenant Space, Inc. v. Superior Court, 149

Cal App. 4th 159, 166 (2007)).

However, Cal. Civ. Pro. Code § 877.6 does not apply to the settlement with Mr. Elekman. The trustee has not requested a good faith determination under that statute with respect to the Elekman settlement.

Further, to the extent Sutter contends that section 877.6 applies here, it is wrong. Cal. Civ. Pro. Code § 877.6 is a California statute that applies to causes of action based on California law, where "it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt." As pertinent here, then, the trigger of section 877.6 is joint tortfeasor liability.

But, the joint liability in this case is based on 11 U.S.C. § 550(a) and not on California law. The court is aware of no authority making Cal. Civ. Pro. Code § 877.6 applicable to causes of action based on a federal statute, such as 11 U.S.C. § 550(a).

The asserted transfer avoidance here, like all transfer avoidances, is comprised of two separate and independent claims - a claim to avoid the transfer in question, followed by a claim to recover the transferred property or its value.

The trustee has invoked Cal. Civ. Code § 3439 et seq. and 11 U.S.C. § 544(b) for the transfer avoidance claim. This step allows the trustee simply to avoid the transfer, *i.e.*, the sale of the property to Sutter. The trustee still needs 11 U.S.C. § 550(a), a claim for recovery of the transfer, to recover the transferred property or its value from those benefitting from the transfer.

Under 11 U.S.C. § 550(a), "[e]xcept as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

"*(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or*

"*(2) any immediate or mediate transferee of such initial transferee.*"

11 U.S.C. § 550(a) is the statute that allows the trustee to recover the transferred property or its value.

In other words, the trigger of Cal. Civ. Pro. Code § 877.6 is joint tortfeasor liability of Sutter and the debtor's members under nonbankruptcy law. The members potential liability is based, not on joint tortfeasor liability but on 11 U.S.C. § 550(a). And, the court cannot conclude that the subject compromises of the 11 U.S.C. § 550(a) claims are subject to Cal. Civ. Pro. Code § 877.6.

Accordingly, neither of the settlements are subject to Cal. Civ. Pro. Code § 877.6. While the court will approve the settlement with Mr. Elekman, it will deny approval of the settlement with the debtor's nonmanaging members, as this latter settlement is expressly conditioned on the court making a good faith determination under Cal. Civ. Pro. Code § 877.6.

Finally, the court will deny Sutter's request for continuance of the hearing on this motion. This motion was brought under the court's 28 days' long-notice

procedure, pursuant to Local Bankruptcy Rule 9014-1(f)(1), giving Sutter sufficient time to evaluate the merits for approval of the compromises.

More, the adversary proceeding against Sutter has been pending for nearly one year. Also, Sutter and the other defendants have been involved in settlement talks with the trustee for several months. This motion is not be a surprise to Sutter. Given this and given the inapplicability of Cal. Civ. Pro. Code § 877.6, the court is unpersuaded that a continuance is warranted.

2. 14-30320-A-7 PETER WOLK — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DKP-1 — 1-8-16 [116]

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

The motion will be granted.

Darrell Petersen, CPA, accountant for the estate, has filed his first and final motion for approval of compensation. The requested compensation consists of $9,392 in fees and $0.00 in expenses. This motion covers the period from November 4, 2014 through November 30, 2015. The court approved the movant's employment as the estate's accountant on February 11, 2015. In performing its services, the movant charged hourly rates of $172 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation, reviewing various documents of the debtor, analyzing tax consequences pertaining to the disposal of estate property, preparing estate tax returns, preparing tax liability determination requests under section 505(b), and communicating with the trustee about tax-related issues.

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

3. 14-30320-A-7 PETER WOLK — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DLO-6 — 1-8-16 [120]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required

to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Law Office of Denise Olrich, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,222.50 in fees and $131.66 in expenses, for a total of $9,354.16. This motion covers the period from October 29, 2014 through the present. The court approved the movant's employment as the trustee's attorney on December 3, 2014. In performing its services, the movant charged an hourly rate of $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assessing and working on the recovery of the debtor's medical practice bank account, (2) analyzing exemption claims, (3) preparing and prosecuting an exemption objection, (4) analyzing exemption amendments, (5) preparing and prosecuting a motion for abandonment of a vacation home, (6) negotiating sale of personal property to the debtor, (7) reviewing purchase agreement, (8) preparing and prosecuting motion for approval of the sale, and (9) preparing and filing employment and compensation motions.

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

4. 15-28124-A-7 GARY/GRACE PALMA — MOTION TO AVOID JUDICIAL LIEN
JM-2
VS. CITIBANK, N. A. — 12-21-15 [15]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Grace Palma in favor of Citibank for the sum of $2,931.67 on October 16, 2013. The abstract of judgment was recorded with San Joaquin County on December 30, 2013. That lien attached to the debtor's residential real property in Lathrop, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied because the debtor's evidence of value for the property is inadmissible. Although the debtors purport to value the property themselves, they unequivocally state that their valuation is based on what zillow.com says about the value of the property. Docket 17 at 1.

But, what zillow.com says about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from anyone working at zillow.com in this record, much less a declaration qualifying zillow.com as an expert and establishing the methodology by which zillow.com determined the value of the property. See Fed. R. Evid. 702.

Valuation evidence based on reports from "zillow.com" and other similar

Internet based sources is not admissible. While Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the value reported by zillow.com meets this criteria. The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa, 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

As lay witnesses, the debtors' opinion of value for the property can be based solely on the fact that they own the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtors rely to render their opinion of value. As a result, their opinion of value is inadmissible.

5. 15-24238-A-7 ZACHARY/STEPHANIE JOHNSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 1-12-16 [22]
DITECH FINANCIAL, L.L.C. VS.

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

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

The movant, Ditech Financial, L.L.C., seeks relief from the automatic stay as to a real property in Galt, California.

Given the entry of the debtor's discharge on September 8, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $150,000 and it is encumbered by claims totaling approximately $248,918. The movant's deed is in first priority position and secures a claim of approximately $224,029.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to

obtain possession of the subject property following sale. No other relief is awarded.

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

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

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

6. 16-20048-A-7 KAELA WATTS — MOTION TO CONFIRM TERMINATION OF STAY 1-13-16 [17]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Pacific Gas & Electric Company, seeks confirmation of the absence of the automatic stay under 11 U.S.C. § 362(c)(4) in this case, given the debtor's filing of four prior bankruptcy cases pending within a year of her filing this case, which prior cases were dismissed.

However, this case was dismissed on January 25, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). Accordingly, this motion will be dismissed as moot. The court also notes that the motion does not request in rem or nunc pro tunc relief.

7. 15-28350-A-7 NIESHA HARRIS
RJM-1 — MOTION FOR SANCTIONS 1-12-16 [14]

Tentative Ruling: The motion will be granted in part and denied in part.

The debtor asks for damages against A-L Financial Corp. for its violations of the automatic stay, consisting of continued post-petition wage garnishment.

The debtor filed the instant bankruptcy case on October 27, 2015. A-L had a standing pre-petition wage garnishment order against the debtor's paycheck. A-L is listed in Schedule F, filed on the petition date, holding a claim for $2,635. The claim is based on a judgment A-L obtained against the debtor. The Sacramento County Sheriff's Office, which apparently facilitates the wage garnishment on behalf of A-L, is also listed in Schedule F. Docket 1, Schedule F.

The notice of chapter 7 bankruptcy case was served on both A-L and the Sheriff on October 31, 2015. Docket 10. A-L has continued to garnish the debtor's wages. A $50 levy against the debtor's paycheck was processed on December 1,

2015. Docket 18, Ex. A. Given the December 1 levy, the debtor's counsel sent a letter to A-L on December 9, 2015, asking A-L to stop post-petition collections. Docket 18, Ex. D. A-L received the debtor's December 9 letter on December 14. Docket 18, Ex. E. Another $50 levy against the debtor's paycheck was processed on January 1, 2016. Docket 18, Ex. B.

This motion was filed on January 12, 2016, to compel A-L:

(1) cease the ongoing garnishment,

(2) return to the debtor the funds that have been garnished post-petition,

(3) pay $1,500 to the debtor in general damages, and

(4) pay the debtor's attorney's fees to her counsel, in the amount of $1,500, for enforcing the stay and prosecuting this motion.

11 U.S.C. § 362(a) provides that:

"*Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—*

"*(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;*

"*(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;*

"*(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.*"

Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).

A creditor who has violated the automatic stay is required to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7 (B.A.P. 9th Cir.

2002); Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002). "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003).

Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

A movant can recover attorney's fees and costs as actual damages under section 362(k) for enforcing the automatic stay, for remedying the stay violation, and for prosecuting a request for damages. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1100-01 (9th Cir. 2015) (en banc) (overruling Sternberg v. Johnston, 595 F.3d 937, 940 (9th Cir. 2010)); see also Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

The debtor in this case - Niesha Harris - is an individual who was injured by A-L's post-petition garnishment of wages. The violations of the automatic stay were willful as A-L was aware of this bankruptcy filing prior to the December 1 and January 1 levies of the debtor's paycheck.

Prior to the December 1 levy, A-L was aware of the bankruptcy filing because it had been mailed a notice of chapter 7 bankruptcy case on October 31, 2015. Docket 10.

Prior to the January 1 levy, A-L was aware of the bankruptcy filing because it had been mailed a notice of chapter 7 bankruptcy case on October 31, 2015 and the debtor's counsel had mailed a letter to A-L, by certified mail, on December 9, apprising it once again of the bankruptcy filing. Docket 10.

The address listed for A-L in Schedule F is the same address where A-L was served both with the notice of chapter 7 case and the debtor's December 9 letter. The return receipt for the December 9 letter was signed on December 14, 2015 by someone named R. Haddix, on behalf of A-L. Docket 18, Ex. E. A-L

then knew of this case and the stay prior to the December 1 and January 1 levies. A-L intended the continued garnishing of the debtor's wages, as it did not reverse the standing levy, after learning of the bankruptcy case. Accordingly, by its continued post-petition garnishment of the debtor's wages, A-L violated the stay willfully.

The court does not need to order A-L to cease violating the stay. The prohibition is in the ongoing statutory injunction of 11 U.S.C. § 362(a). A-L shall return to the debtor the funds that have been garnished post-petition and it shall pay the debtor's attorney's fees to her counsel, in the amount of $1,500, for enforcing the stay and prosecuting this motion. In addition, given A-L's persistence in violating the stay, despite having been served with multiple notices of this bankruptcy filing, the court will award $1,500 to the debtor as punitive damages. A-L shall have seven calendar days from entry of the order on this motion, to comply with the foregoing.

Lastly, in the event A-L continues to garnish the debtor's wages on February 1, 2016 or after that date, while the automatic stay in the case is pending, A-L shall pay the debtor $750 for each such garnishment, in addition to returning back to the debtor any funds that were actually garnished. A-L shall pay the damages to the debtor within seven days of each continued garnishment. Such damages are calculated to coerce A-L to comply with the automatic stay injunction in this case.

This ruling does not apply to garnishments that take place after entry of the debtor's chapter 7 discharge. Once a chapter 7 bankruptcy discharge is entered, the automatic stay is no longer in effect as to the debtor. See 11 U.S.C. § 362(c)(2)(C).

8.	11-34464-A-7 STUART SMITS 11-2636 BARDIS V. SMITS	APPLICATION AND ORDER TO APPEAR FOR EXAMINATION (STUART LANSING SMITS) 10-14-15 [61]

Tentative Ruling: None. The respondent and judgment debtor shall appear and be sworn in prior to the court's February 1, 2016 10:00 a.m. calendar.

9.	14-31664-A-7 MORRIS/SALLY COFFMAN VVF-1 HONDA LEASE TRUST VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-11-16 [20]

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

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

The movant, Honda Lease Trust, seeks relief from the automatic stay with

respect to a leased 2013 Honda Civic vehicle.

Given the entry of the debtor's discharge on March 9, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the vehicle has a value of $11,750 and the outstanding debt under the lease agreement totals approximately $14,327. Docket 22. The debtor also has not made two pre-petition and one post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The court concludes that the above is cause for the granting of relief from stay as to the estate.

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

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

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

10. 15-24481-A-7 EMERY ULRICH
AP-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-11-15 [12]

Tentative Ruling: The motion will be granted in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Red Bluff, California.

Given the entry of the debtor's discharge on October 6, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $250,000 and it is encumbered by claims totaling approximately $261,460. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

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

The court determines that this bankruptcy proceeding has been finalized for

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

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

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

11. 15-25781-A-12 GLORIA AVILA — MOTION TO CONFIRM PLAN 10-15-15 [18]
TOG-3

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from December 28, 2015. The minutes for the December 28 hearing state "[a]n amended plan or proposed order confirming plan and evidence to support confirmation due 1/19/16 . . . **[o]pposition due 1/26/16.**" Docket 34. The court sees no new filings on the case docket. Accordingly, the ruling posted for December 28 follows below.

The debtor is seeking confirmation of her chapter 12 plan filed on October 15, 2015. Docket 22. Wilmington Trust National Association (Ocwen Loan Servicing), however, objects to plan confirmation. Docket 29.

The motion will be denied because the plan does not provide for the payment of any pre-petition arrears to Wilmington. Wilmington asserts it is owed approximately $27,906 in pre-petition arrears. The plan does not deny the existence of pre-petition arrears.

Wilmington has also noted that there is a co-borrower on Wilmington's loan, an individual named Roberto Domingo. While Mr. Domingo is not a debtor in this case, this raises a question of whether Mr. Domingo owns an interest in the debtor's real property. There is nothing in the record to clarify this. The debtor's Schedule A says only that the debtor own a fee simple interest in the property. It does not say, however, that the debtor owns 100% interest in the property. This must be clarified by the debtor.

The court will overrule the other objections by Wilmington.

The plan is not attempting to strip down Wilmington's claim to the value of the property without a motion. The plan unequivocally states that Wilmington's "claim is fully secured and will be paid in full by debtor." Docket 22 at 4.

Further, the objection to the proposed 4.75% interest rate will be overruled because Wilmington has produced no evidence in support of its confirmation objection that the proposed 4.75 interest rate is inconsistent with Till.

The Supreme Court decided in Till v. SCS Credit Corp., 541 U.S. 465 (2004),

that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default.

The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. The debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

"Moreover, starting from a concededly *low* estimate and adjusting *upward* places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." Till at 479.

But, there is no admissible evidence from Wilmington, in the form of declaration or affidavit in support of its objection, of its assertion that the loan should be repaid at a higher than the proposed 4.75% rate.

The same is true with respect to the contention that a 15-year reamortization of Wilmington's loan is impermissible. There is no evidence from Wilmington that such a loan term is unreasonable. Nor does Wilmington explain why a 15-year reamortization is unreasonable. It only argues that "twelve years [beyond the proposed three-year plan] is too great a time to extend the maturity of the loan." Docket 29 at 2.

FINAL RULINGS BEGIN HERE

12. 14-30201-A-7 SHARON GILLAM — MOTION TO COMPEL ABANDONMENT
DAO-1 — 1-4-16 [42]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property in Sacramento, California. The majority of equity in the property is exempt.

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

The debtor has submitted evidence that the value of the property is $178,000. Docket 44. The property is encumbered by a deed of trust in favor of Green Tree in the amount of $67,500. Docket 44. The debtor has exempted $108,360.28 in the property under Cal. Code Civ. Proc. § 704.730.

Given the value of the property, the mortgage against the property, the debtor's exemption claim, and the estimated approximately 8% in sales costs that would be entailed in a liquidation, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

13. 15-29109-A-7 ELLIOTT LYMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 — 12-31-15 [14]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Jamesville, California. The property

has a value of $100,000 and it is encumbered by claims totaling approximately $231,154. The movant's deed is in first priority position and secures a claim of approximately $141,154.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 20, 2016.

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

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

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

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

14. 15-29014-A-7 GREGORY BLAZEK — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 12-28-15 [11]
DITECH FINANCIAL, L.L.C. VS.

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

The motion will be granted.

The movant, Ditech Financial, L.L.C., seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $235,000 and it is encumbered by claims totaling approximately $238,063. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 4, 2016.

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

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

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

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

15. 11-40155-A-7 DWIGHT BENNETT
HSM-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
12-30-15 [312]

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

The motion will be granted.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $45,380 in fees and $260.75 in expenses, for a total of $45,640.75. This motion covers the period from November 21, 2011 through the present. The court approved the movant's employment as the trustee's attorney on December 21, 2011. In performing its services, the movant charged hourly rates of $285, $295, $300, $360, $380 and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) evaluating value of assets for the estate, (3) reviewing status and issues pertaining to state court proceedings, including a receivership action, (4) analyzing claims, (5) assessing actions taken by secured creditors, their counsel, Lassen County, and other parties, against property of the estate, (6) negotiating sale of

estate litigation rights and claims to creditors, (7) attending numerous hearings on various motions, (8) responding to oppositions and motions by the debtor, (9) communicating with and responding to Grace Foundation's requests and motions, (10) preparing and prosecuting abandonment motions as to the estate's animals and the real property in Lassen County, and (11) preparing and filing employment and compensation motions.

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

16. 15-29187-A-7 MAURICE TAYLOR
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-23-15 [10]

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

The motion will be granted.

The movant, Santander Consumer U.S.A., Inc., seeks relief from the automatic stay with respect to a 2013 Chevrolet Impala. The movant has produced evidence that the vehicle has a value of $12,725 ($9,161 per Schedule B) and its secured claim is approximately $16,661. Docket 12.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on January 4, 2016.

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

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

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

17. 15-22890-A-7 ANGELICA BOCHAROFF
PA-3

MOTION TO
APPROVE COMPROMISE
1-4-16 [67]

Final Ruling: This motion has been set for hearing on the notice required by

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor, resolving the estate's interest in a real property in West Sacramento, California, a 2008 Volvo 670 vehicle, and a 2012 Toyota Camry vehicle.

Under the terms of the compromise, the debtor will pay $25,000 to the estate and will retain her interest in the real property and the two vehicles. In addition, the debtor: disavows any interest in $5,304.59 of unexempt bank account funds that have been turned over to the trustee already; agrees not to file any further exemption amendments; and agrees not to seek conversion of the case to a chapter 13 proceeding. Also, as of the effective date of the settlement, the trustee "shall abandon" the estate's interest in the real property, Volvo vehicle and Toyota vehicle.

The debtor has asserted that the real property has a value of $327,500. After accounting for sales costs, secured claims and the debtor's $100,000 exemption claim, the trustee estimates the estate to net only approximately $7,033 from a sale of the property.

The Volvo vehicle has a scheduled value of $34,000 and, although it is subject to a secured claim totaling approximately $35,828 (and an exemption claim for $4,850), the creditor appears not to have properly perfected its interest in the vehicle. Despite this, however, the creditor is holding the pink slip for the vehicle and the trustee contends that any litigation to remove the lien on the vehicle would be expensive, risky and would delay recovery for the estate.

As to the Toyota vehicle, even though the debtor is paying for it, it is registered in the name of her niece. Just as with the Volvo vehicle, then, the trustee would have to initiate an adversary proceeding to realize value from the vehicle for the estate.

On the other hand, as of the time this motion was filed, the filed claims in the case totaled $33,576.23, representing only two claims.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the above issues identified with the real property and the two vehicles, given the inherent costs, risks, delay and inconvenience of further litigation, and given that the settlement proceeds will pay a significant portion of the filed claims in the case, the settlement is equitable and fair.

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

18. 15-29291-A-7 NINA LOMAX — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 1-4-16 [10]
OCWEN LOAN SERVICING, L.L.C. VS.

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

The motion will be granted.

The movant, Ocwen Loan Servicing, L.L.C., seeks relief from the automatic stay as to a real property in Tenino, Washington. The property has a value of $248,182 and it is encumbered by claims totaling approximately $263,115. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on January 7, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

19. 14-31396-A-7 STEVEN/GAIL FOXWORTHY
MDE-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-29-15 [31]

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

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

The movant, Toyota Motor Credit Corp., seeks relief from the automatic stay with respect to an already surrendered 2013 Toyota Venza vehicle.

Given the entry of the debtor's discharge on March 25, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The vehicle has a value of $21,153 and its secured claim is approximately $24,209.

The court concludes that there is no equity in the vehicle and no evidence exists that the trustee can administer it for the benefit of the creditors. The vehicle has been already surrendered to the movant.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.