UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 13, 2017 at 10:00 a.m.

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

1, 7

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the 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 MARCH 13, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 28, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 6, 2016. 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. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-49
VS. BROCKETT REALTY II, L.P. — 12-29-16 [1137]

Tentative Ruling: The objection will be sustained.

The trustee objects to the administrative expense proof of claim, POC 200-1, in the amount of $8,291.32, filed by Brockett Realty II, L.P. The trustee challenges the administrative expense status of the claim and requests the claim to be reclassified as a general unsecured claim.

Brockett has filed a response, agreeing that its claim be reclassified as general unsecured. Given Brockett's response, the court will reclassify the claim as general unsecured. The objection will be sustained.

2. 15-21533-A-7 ROBERT/DELORES ANDERSON — MOTION TO APPROVE COMPROMISE
MHK-2 — 1-3-17 [43]

Tentative Ruling: The motion will be granted.

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

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

The debtors oppose the motion because they have amended their exemption, increasing it from $10,000 to $25,575. Docket 55. They are asking the court to award them the amended exemption amount.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the litigation was conducted through a multi district litigation procedure, given the additional uncertainties and difficulties associated with litigating the claim outside the multi district litigation procedure, given that the settlement was facilitated by a court-

appointed special master who evaluated claims according to medical and other factors, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes 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.

The court will not determine the viability of the debtors' amended exemption in connection with this motion. Parties in interest have 30 days to object to the new amended exemption. Fed. R. Bankr. P. 4003(b)(1). Importantly, even if the new exemption is ultimately allowed to stand, the estate would still generate approximately $24,000 for the benefit of creditors from the settlement. The motion will be granted.

3. 16-21235-A-7 SHANE/LEIGHA MORO — MOTION FOR SANCTIONS
KWS-2 — 1-2-17 [31]

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

The debtors are seeking sanctions against Kaiser Permanente and UCSB, Inc. for discharge injunction violations involving a debt for pre-petition medical services.

The debtors filed this chapter 7 bankruptcy case on February 29, 2016. They did not list Kaiser as a creditor in their schedules. Docket 1, Schedule E/F. The chapter 7 trustee issued a report of no distribution on March 30, 2016. The debtors' chapter 7 discharge was entered on June 13, 2016.

In July 2016, the debtors received a bill from Kaiser for $275, for services in January 2016.

On August 4, the debtors' counsel sent a letter to Kaiser, informing it of the bankruptcy filing and discharge, and asking for the stop of further collections. Docket 35, Ex. B.

On or about August 8, the debtors received a collection notice from UCSB America for a Kaiser debt in the amount of $692.14, incurred by the debtors in January 2016. Docket 35, Ex. C.

On August 16, the debtors' counsel sent another letter to Kaiser, once again asking it to stop further collections. Docket 35, Ex. D.

On or about August 21, the debtor Leigha Moro spoke on the telephone with a Kaiser representative named Theresa, who acknowledged receiving the bankruptcy letters from the debtors' counsel. Docket 33 ¶ 7. She was also threatened that there would be negative reporting to the credit bureaus for the failure to pay the debt. Id.

On August 24 and 25, the debtors' counsel sent additional letters to UCSB and Kaiser, asking them to honor the bankruptcy discharge and stop collecting on the debt. Docket 35, Exs. E & F.

Mrs. Moro states that she suffered a miscarriage due to the stress she incurred

from Kaiser's collection efforts. Docket 33 ¶ 10.

On November 9, 2016, the debtors received another bill from Kaiser, for $10, for medications purchased on February 25, 2016. Docket 35, Ex. G.

Mrs. Moro contacted Kaiser about this latest bill, but Kaiser stated that they had no knowledge of the debtors' bankruptcy filing. Docket 33 ¶ 9.

The debtors filed this motion on January 2, 2017, seeking an order:

- holding Kaiser in contempt of court for violating the discharge injunction;
- awarding reasonable compensatory damages to the debtors;
- awarding reasonable deterrent sanctions against Kaiser;
- awarding reasonable attorney's fees for 9.77 hours of services provided by the debtors' counsel.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The moving party must prove by clear and convincing evidence that the offending party violated the order. Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The violation must have been willful. The party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

"To be subject to sanctions for violating the discharge injunction, a party's violation must be 'willful.' The Ninth Circuit applies a two-part test to determine whether the willfulness standard has been met: (1) did the alleged offending party know that the discharge injunction applied; (2) and did such party intend the actions that violated the discharge injunction? In re Nash, 464 B.R. at 880 (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n. 7 (9th Cir. 2008), aff'd, --- U.S. ----, 130 S.Ct. 1367, 176 L. Ed. 2d 158 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir.2006). For the second prong, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue. Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other

grounds, 285 F.3d 882 (9th Cir. 2002). 'A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt.' Jarvar v. Title Cash of Mont., Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009)(citing Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009-10 (Bankr. D. Minn. 1994)); see also In re Sanburg Fin. Corp., 446 B.R. 793, 804 (S.D. Tex. 2011)(that the offending party may have not understood its actions to violate the discharge injunction does not negate the willfulness finding, even if true)."

Rosales v. Wallace (In re Wallace), No. NV-11-1681-KiPaD, 2012 WL 2401871 at *5 (B.A.P. 9th Cir., June 26, 2012).

The court may not award punitive damages for violations of the discharge injunction because civil contempt sanctions are remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

The court will not hold UCSB in contempt. UCSB was not listed in the debtors' Schedule E/F and it learned of the bankruptcy discharge only from the letters sent by the debtors on August 24. Since that date, the court has no evidence that UCSB has continued to collect on any pre-petition debt from the debtors.

The court will hold Kaiser in contempt. Even after learning from the debtors of the bankruptcy filing and discharge, it continued to collect a pre-petition debt. Even though Kaiser was not listed as a creditor in the debtors' schedules, their debt was discharged because this was a no asset case. No claims bar date was ever set in the case. See 11 U.S.C. § 523(a)(3)(A) (prescribing that a non-section 523(a)(2), (4) or (6) claimant must have had enough notice of the case to permit the timely filing of a proof of claim).

On the other hand, Kaiser has not responded to this motion, and there is nothing in the record indicating that Kaiser could have sought a determination of non-dischargeability under section 523(a)(2), (4) and/or (6) if it had timely notice of the bankruptcy. See 11 U.S.C. § 523(a)(3)(B) (precluding discharge in no asset chapter 7 cases, where the claimant would have sought determination of non-dischargeability under section 523(a)(2), (4) and/or (6)).

The debtors' August 4 letter to Kaiser was sufficient notice for Kaiser to cease all collections of pre-petition debt.

However, the court cannot award all the compensatory damages sought by the debtors.

There is no admissible or convincing evidence that Kaiser's conduct caused or materially contributed to the miscarriage. The contention by Mrs. Moro that the miscarriage happened due to her stress from Kaiser's improper collection efforts is not substantiated by expert opinion or medical evidence.

As to the requested attorney's fees, the record is missing the exhibit that outlines the purported 9.77 hours of services rendered by the debtors' counsel. Exhibit H, referred to in Ms. Schumacher's declaration is not among the exhibits submitted in support of the motion. Docket 34 ¶ 7; Docket 35. Hence, the court cannot determine the reasonableness of the sought attorney's fees.

Nevertheless, based on the number and content of the letters sent to Kaiser,

and the expected communications between the debtors and their counsel about the bills they were receiving, the court will award $2,000 as compensatory damages for the attorney's fees the debtors incurred in dealing with Kaiser and in filing this motion.

Finally, the court will award sanctions against Kaiser to deter future collection of pre-petition debt. For every future bill sent by Kaiser to the debtors to collect a pre-petition debt, Kaiser shall pay the debtors $250. This sanction has been narrowly calculated solely to coerce Kaiser's future compliance with the discharge injunction.

4. 16-25935-A-7 DOUGLAS/KIM JACOBS — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
ROUNDPOINT MORTGAGE SERVICING CORP. VS. — 1-18-17 [70]

Tentative Ruling: The motion will be dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, Roundpoint Mortgage Servicing Corp., seeks relief from the automatic stay as to a real property in Roseville, California.

The debtors oppose the motion, disputing the value of the property assigned by the movant and promising to be seeking conversion back to chapter 13 to reorganize.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On March 9, 2016, the debtors filed a chapter 13 case (case no. 16-21439). But, the court dismissed that case on May 20, 2016 due to the debtors' failure to make plan payments. The debtors filed the instant case, as a chapter 13, on September 6, 2016. They converted this case to chapter 7 on December 16, 2016, less than two months ago.

The prior case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on October 6, 2016, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on October 6,

2016, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

The opposition makes no sense, given the absence of an automatic stay.

5. 10-39048-A-7 HEIDI RYAN — MOTION TO AVOID JUDICIAL LIEN
MS-1
VS. KELKRIS ASSOCIATES, INC. — 1-11-17 [24]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of $20,169.92 on April 28, 2010. The abstract of judgment was recorded with Solano County on June 1, 2010. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is asking the court to avoid the lien.

The subject real property had an approximate value of $263,000 as of the petition date. Dockets 26 & 1. The unavoidable liens totaled $442,826 on that same date, consisting of a single mortgage in favor of Wachovia. Dockets 1, 26, 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 22 & 27.

However, the motion will be denied because the debtor amended Schedule C on January 11, 2017 to add an exemption in the subject property, but she did not serve the Amended Schedule C on all creditors, informing them of the added exemption. Dockets 22, 23, 3. Parties in interest, including all creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). While the master address list contains approximately 20 creditors, the Amended Schedule C was served only on the trustee and the respondent to this motion. Dockets 3 & 23. Because the debtor has not afforded all parties in interest such an opportunity, the motion will be denied.

6. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
VS. WELLS FARGO BANK, N.A. — 7-28-15 [71]

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

The movant, Wells Fargo Bank, seeks relief from stay as to real property in Sonoma, California.

Given the entry of the debtor's discharge on August 7, 2014, 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 had provided the trustee with time to market and sell the property. As the court has not heard from the parties about the outcome of the estate's efforts to sell the property, however, the court infers that the movant is not interested in prosecuting the motion with respect to the estate. Accordingly, the court is inclined to deny the motion as to the estate.

7. 11-37753-A-7 CORY WIEST
MS-2
VS. LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

MOTION TO AVOID JUDICIAL LIEN
1-13-17 [31]

Tentative Ruling: The hearing on the motion will be continued to February 27, 2017 at 10:00 a.m.

A judgment was entered against the debtor in favor of Richard Byers for the sum of $8,740.75 on March 17, 2008. Subsequently, the judgment was assigned to the Labor Commissioner of the State of California. The abstract of judgment was recorded with Solano County on April 14, 2008. That lien attached to the debtor's residential real property in Fairfield, California.

The subject real property had an approximate value of $127,800 as of the petition date. Dockets 33 & 1. The unavoidable liens totaled $195,722 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 19 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 19 & 33.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

While the court is inclined to grant the motion, it cannot do so until the deadline for objections to the debtor's exemption of the property has expired. The Amended Schedule C adding the subject exemption to the property was not served on all creditors until January 13, 2017, meaning that the deadline for exemption objections does not expire until the end of the day on February 13, 2017, which is also the day on the hearing of this motion. Docket 36; see also Fed. R. Bankr. P. 9006(a)(1)(C) (prescribing that "if the last day [of the period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday"). Accordingly, the hearing on this motion will be continued to February 27, 2017 at 10:00 a.m.

8. 16-24867-A-7 EUGENE FEDON AND NANCY BUSCHE-FEDON
DMW-1

MOTION TO SELL
1-17-17 [18]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $35,000 the estate's interest in non-exempt equity in the debtors' real property in Nevada City, California to the debtors. The sale is "as is" and "where is," with no warranties or guarantees. The trustee estimates the non-exempt equity in the property to be $46,515.85. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate, and it will avert the delay, inconvenience and risks associated with marketing and selling the entire

property on the open market. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

9. 17-20068-A-7 ROYLENE BROWN — MOTION FOR RELIEF FROM AUTOMATIC STAY
EMM-1 — 1-13-17 [13]
THE BANK OF NEW YORK MELLON VS.

Tentative Ruling: The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Sutter Creek, California. In the motion papers, the property is identified by an assessor parcel number 015-310-026-000. Docket 16 at 7 & 19; Docket 17.

The trustee has filed a non-opposition. The debtor has filed a non-opposition to the granting of stay relief as to assessor parcel number 015-310-026-000, but she opposes relief as to assessor parcel number 015-310-027-000.

As the subject property is identified in the motion papers only as assessor parcel number 015-310-026-000, the court is not granting relief as to any other real property, including assessor parcel number 015-310-027-000.

The subject property has a value of $308,000 and it is encumbered by claims totaling approximately $662,442. The movant's deed is in first priority position and secures a claim of approximately $518,442.

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.

10. 16-27589-A-7 ROBERT TURNER
SLH-1

MOTION TO
WITHDRAW AS ATTORNEY
1-4-17 [17]

Tentative Ruling: The motion will be denied.

Attorney Seth Hanson asks for permission to withdraw as counsel for the debtor pursuant to California Rule of Professional Conduct 3-700(C)(1)(d) and (e), because, according to the motion, "the client's failure to respond to advice of counsel has made it unreasonably difficult for counsel to carry out the employment effectively." Docket 17 at 1-2.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"*(A) In General.*

"*(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

"*(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

"*(B) Mandatory Withdrawal.*

"*A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:*

"*(1) The member knows or should know that the client is bringing an action,*

conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

"*(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

"*(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

"*(C) Permissive Withdrawal.*

"*If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:*

"*(1) The client*
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

"*(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or*

"*(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or*

"*(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or*

"*(5) The client knowingly and freely assents to termination of the employment; or*

"*(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.*"

First, the reason cited for the movant's withdrawal — namely, the debtor's failure to respond to advice of counsel — is not established by any evidence. The movant's motion makes the factual assertion that the debtor is not responding to his advice. Docket 17. The declaration in support of the motion does not establish this factual allegation. Docket 19. This alone is sufficient basis for denial of the motion.

Second, California Rule of Professional Conduct 3-700(C)(1)(e) does not apply because the requested documents by the trustee are a matter pending before a tribunal.

Finally, the debtor's response states the movant has advised him that the trustee cannot compel him to produce whatever documents have been requested. More, the debtor contends the documents requested from the trustee have nothing to do with "the case or [his] financial picture." Docket 22. As such, even if supported by evidence, the motion lacks important information about why the movant is insisting that the debtor produce seemingly irrelevant documents that cannot be compelled from the debtor. The court cannot conclude that the debtor's refusal to produce the documents renders it unreasonably difficult for the movant to carry out his employment effectively.

In short, the movant has not met his burden of persuasion to establish cause for withdrawal. The motion will be denied.

FINAL RULINGS BEGIN HERE

11.	16-22503-A-7 DNL-2	EMBRY FANTOZZI	MOTION TO EMPLOY ACCOUNTANT 1-19-17 [35]

Final Ruling: The movant has provided only 25 days' notice of the hearing on this motion. Docket 39. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 36. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

12.	16-22503-A-7 MOH-1 VS. AMERICAN EQUIPMENT RENTALS AND SALES, INC.	EMBRY FANTOZZI	OBJECTION TO CLAIM 1-12-17 [31]

Final Ruling: The objection will be dismissed as moot because the proof of claim was withdrawn by the claimant on January 27, 2017.

13.	12-28413-A-7 CWC-39 VS. CARPENTERS SOUTHWEST ADMINISTRATIVE CORP.	F. RODGERS CORPORATION	OBJECTION TO CLAIM 12-28-16 [1087]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 25, 2012, Carpenters Southwest Administrative Corp. filed an unsecured proof of claim (POC 224-1) in the amount of $304,305.82, from which $234,529.40 has been classified as a priority claim under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier) and under 11 U.S.C. § 507(a)(5) (contributions to an employee benefit plan).

The trustee objects to the $234,529.40 priority portion of the claim, asking that it be disallowed as a priority claim under 11 U.S.C. § 507(a)(4) because it does not identify employees of the debtor or unpaid wages, salaries or commissions. The claim also contains liquidated damages, audit fees, interest and bank charges, which are not wages, salaries or commissions under section

507(a)(4).

The trustee agrees, however, that the $234,529.40 portion of the claim should retain its priority status under section 507(a)(5).

The court agrees. It will disallow the $234,529.40 portion of the claim under section 507(a)(4), but the claim's priority status will be retained under section 507(a)(5). The objection will be sustained.

14. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-40
VS. CONSTRUCTION LABORERS TRUST FUNDS ADMINISTRATIVE COMPANY, LLC — 12-28-16 [1092]

Final Ruling: The objection has been voluntarily dismissed by the objecting party. Docket 1155 (mistakenly referring to docket control number CWC-48).

15. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-41
VS. MARVIN W. CHAPMAN — 12-28-16 [1097]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On July 31, 2012, Marvin Chapman filed a priority unsecured proof of claim (POC 54-1) in the amount of $2,705.60, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objects to the claim in its entirety as it is duplicative of the priority proof of claim of Southwest Regional Council of Carpenters in the amount of $24,531.80 (POC 225-1).

The court agrees. Mr. Chapman's claim has been amended by Southwest's priority proof of claim. Mr. Chapman is listed as one of the employees for whom Southwest is asserting its claim. POC 225-1. Mr. Chapman's proof of claim will be disallowed in its entirety. The objection will be sustained.

16. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-42
VS. JAVIER A. LUVIANO — 12-28-16 [1102]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.

1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On August 3, 2012, Javier Luviano filed a priority unsecured proof of claim (POC 70-1) in the amount of $1,951.20, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier) and under 11 U.S.C. § 507(a)(5) (contributions to an employee benefit plan).

The trustee objects to the claim in its entirety as it is duplicative of the priority proof of claim of Southwest Regional Council of Carpenters in the amount of $24,531.80 (POC 225-1).

The court agrees. Mr. Luviano's claim has been amended by Southwest's priority proof of claim. Mr. Luviano is listed as one of the employees for whom Southwest is asserting its claim. POC 225-1. Mr. Luviano's proof of claim will be disallowed in its entirety. The objection will be sustained.

17. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-43
VS. DANIEL A. KALAPACA — 12-28-16 [1107]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 25, 2012, Daniel Kalapaca filed a priority unsecured proof of claim (POC 202-1) in the amount of $3,602.83, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objects to the claim in its entirety as it is duplicative of the priority proof of claim of Southwest Regional Council of Carpenters in the amount of $24,531.80 (POC 225-1).

The court agrees. Mr. Kalapaca's claim has been amended by Southwest's priority proof of claim. Mr. Kalapaca is listed as one of the employees for whom Southwest is asserting its claim. POC 225-1. Mr. Kalapaca's proof of claim will be disallowed in its entirety. The objection will be sustained.

18. 12-28413-A-7 F. RODGERS CORPORATION
CWC-44
VS. MAYLIN DITTMORE

OBJECTION TO CLAIM
12-28-16 [1112]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On June 26, 2012, Maylin Dittmore filed a priority unsecured proof of claim (POC 25-1) in the amount of $6,923.20, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objects to the priority classification of the claim as it is devoid of any information substantiating the priority status of the claim.

The court agrees. The proof of claim has no attachments indicating the basis for the claim. The court also cannot force the trustee to prove a false negative. He cannot prove that the claim does not qualify as priority under section 507(a)(4), without any information about the basis for the claim.

The claim will be disallowed as priority but allowed as general unsecured. The objection will be sustained.

19. 12-28413-A-7 F. RODGERS CORPORATION
CWC-45
VS. F. RODGERS CORPORATION

OBJECTION TO CLAIM
12-28-16 [1117]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On June 7, 2012, F. Rodgers Corporation, the debtor in this case, filed a priority unsecured proof of claim (POC 13-1) in the amount of $3,906, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objects to the claim in its entirety as it is devoid of any

information substantiating the basis for the claim.

The court agrees. The proof of claim has no attachments indicating its basis. The court also cannot force the trustee to prove a false negative. He cannot prove that the claim does not have any basis, without any information about the basis for the claim.

The claim has been filed by the debtor. The debtor has no standing to assert a priority claim against its bankruptcy estate for wages. It makes no sense.

The claim will be disallowed in its entirety. The objection will be sustained.

20. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-46
VS. REED J. WERNER — 12-29-16 [1122]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 9, 2012, Reed Werner filed a priority unsecured proof of claim (POC 155-1) in the amount of $7,269.24, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objects to the priority classification of the claim as it is devoid of any information substantiating the priority status of the claim.

The court agrees. The proof of claim has no attachments indicating the basis for the claim. The court also cannot force the trustee to prove a false negative. He cannot prove that the claim does not qualify as priority under section 507(a)(4), without any information about the basis for the claim.

The claim will be disallowed as priority but allowed as general unsecured. The objection will be sustained.

21. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-47
VS. PAUL E. BONEY — 12-29-16 [1127]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the

claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 23, 2012, Paul Boney filed a priority unsecured proof of claim (POC 187-1) in the amount of $6,959.82, under 11 U.S.C. § 507(a)(4) (wages, salaries, or commissions earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier).

The trustee objected to the priority classification of the claim as it is devoid of information substantiating the priority status of the claim.

On January 10, 2017, after this objection was filed, Mr. Boney filed another unsecured proof of claim (POC 250-1), for a total amount of $6,959.82 but decreasing the priority portion of the claim to $3,750. Although this new proof of claim by Mr. Boney states that it does not amend prior-filed claims, the court concludes that proof of claim 250-1 amends and supercedes proof of claim 187-1. The latter-filed claim reflects the same amount and it implicates the same priority wages referenced in claim 187-1. Also, the trustee has filed a supplement to the objection, indicating that claim 250-1 was filed only after the trustee came in contact with the claimant and an understanding was reached about amendment of claim 187-1.

Accordingly, claim 187-1 will be disallowed as it has been amended by claim 250-1. The objection will be sustained.

22. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-48
VS. JEMCO FAIRVIEW II PROPERTIES, L.L.C. — 12-29-16 [1132]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On September 18, 2012, Jemco Fairview II Properties, L.L.C. filed an unsecured proof of claim (POC 136-1) in the amount of $871,817.72, from which $86,096.87 is classified as an administrative expense claim for post-petition rents.

The trustee objects solely to the administrative expense portion of the claim, seeking reclassification as a general unsecured claim.

Administrative expenses must be allowed after notice and hearing. 11 U.S.C. § 503(b). Yet, there has been no motion by the claimant seeking administrative status for the claim. As such, this portion of the claim will be reclassified as general unsecured. The objection will be sustained.

23. 12-28413-A-7 F. RODGERS CORPORATION
CWC-50
VS. MAJESTIC RUNWAY PARTNERS V, LLC

OBJECTION TO CLAIM
12-29-16 [1142]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 9, 2012, Majestic Runway Partners V, L.L.C. filed a proof of claim (POC 157-1) in the amount of $749,549.68, from which $194,239.66 is for rent arrears as of the petition date, secured by an UCC filing. The remainder of the claim is classified as general unsecured.

The trustee objects solely to the secured rent arrearage portion of the claim, seeking its reclassification as general unsecured.

The proof of claim is devoid of information substantiating the secured rent arrearage portion of the claim. Except for two UCC filings and the lease agreement between the claimant and the debtor, the proof of claim contains no information showing how the secured rent arrearage was calculated. For instance, the claim does not identify the period over which the arrears accumulated. The court also cannot force the trustee to prove a false negative. He cannot prove that the asserted rent arrears are invalid, without information about the basis for the claim.

The secured rent arrearage of the claim will be reclassified as general unsecured. The objection will be sustained.

24. 14-29813-A-7 LISA AHRENS
DNL-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
1-10-17 [138]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does

not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

25. 16-27525-A-7 LOUIS GOINS
RAS-1
U.S. BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-6-17 [13]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on January 19, 2017, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). And, the movant is not seeking in rem or retroactive relief from stay.

26. 15-24432-A-7 CAROLYN INDREBOE
GJH-1

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
1-11-17 [31]

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.

Hughes Law Corporation, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,500 in fees and $15.20 in expenses, for a total of $3,515.20. This estate and the related estate of the debtor's spouse, William Indreboe, were administered by the trustee in this case. The movant assisted the trustee in the administration of both cases. The movant incurred a total of $8,976.90 in fees and $30.40 in expenses in both cases, but is seeking only $7,000 in fees, 50% in each of the cases.

This motion covers the period from August 13, 2015 through December 27, 2016. The court approved the movant's employment as the trustee's attorney on September 22, 2015. In performing its services, the movant charged hourly rates of $75, $275, $295, $400, and $420.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) attending the meeting of creditors, (2) reviewing and analyzing the debtor's exemptions, (3) assessing the debtor's business interests, (4) negotiating with the debtor about her exemptions, (5) assisting the estate with the sale of a business back to the debtor and her spouse, (6) preparing and filing a motion to sell, (7) communicating with the trustee about various issues, and (8) 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.

27. 16-26046-A-7 KIMBERLY PINOSKI — MOTION TO APPROVE COMPROMISE
SLC-1 — 1-12-17 [21]

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 a $2,000 avoidance transfer claim against the debtor's son.

Under the terms of the compromise, the debtor will pay $1,500 to the estate in full satisfaction of the claim.

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 small amount at stake and the inherent costs, risks, delay and inconvenience of further litigation, 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.

28. 16-28551-A-7 VANESSA WILLIAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 1-11-17 [18]
NAZRANA KHAN 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, Nazrana Khan, seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the owner of the property and the debtor leased it from the movant in August 2016. The debtor defaulted under the lease agreement in October 2016. The movant served the debtor with a three-day notice to pay or quit on November 10, 2016. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on November 23, 2016. The debtor filed an answer in the unlawful detainer action and a trial was set for January 4, 2017. The debtor filed this bankruptcy case on December 30, 2016.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from October 2016 onward.

Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on her pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be 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) will be waived.

29. 16-24253-A-7 BONITA ALEXANDER — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 12-30-16 [14]
SETERUS, INC. 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 in part and dismissed as moot in part.

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Rocklin, California.

Given the entry of the debtor's discharge on October 17, 2016, 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 $370,000 and it is encumbered by claims totaling approximately $385,118. The movant's deed is in first priority position and secures a claim of approximately $199,310.

The court concludes that there is no equity in the property and there is no evidence that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a non-opposition to the motion.

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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in

connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.

30. 16-24261-A-7 C.C. MYERS, INC. MOTION FOR
HSM-1 RELIEF FROM AUTOMATIC STAY
SOUTHERN CALIFORNIA EDISON CO. VS. 1-13-17 [353]

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, Southern California Edison Co., seeks relief from the automatic stay to proceed in non-bankruptcy court with tort claims for property damage against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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) will be ordered waived.

31. 16-23774-A-7 MARVIN/LYNNE KAZEE
BHS-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
1-9-17 [29]

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.

Law Office of Barry H. Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,345 in fees and $38.91 in expenses, for a total of $2,383.91. This motion covers the period from July 25, 2016 through January 9, 2017. The court approved the movant's employment as the trustee's attorney on August 25, 2016. In performing its services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing estate assets, (2) negotiating with the debtors about the non-exempt equity in a vehicle and travel trailer, (3) preparing and filing a motion to sell, and (4) 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.

32. 16-26983-A-7 NOREEN SCHWEISS
RAS-1
DEUTSCHE BANK NATIONAL TRUST CO. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-30-16 [14]

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

Given the entry of the debtor's discharge on January 31, 2017, 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 $275,000 and it is encumbered by claims totaling approximately $319,508. The movant's deed is in first priority position and secures a claim of approximately $305,701.

The court concludes that there is no equity in the property and there is no evidence 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 December 13, 2016.

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.