UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 10, 2014 at 10:00 a.m.

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

2, 5, 10, 12, 13, 14, 18

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. 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 APRIL 7, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 24, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 31, 2014. 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. 11-47505-A-7 PAUL NIEMANN — MOTION TO SELL FREE AND CLEAR OF LIENS AND TO APPROVE COMPENSATION OF REALTOR (FEES $20,000, EXP. $6,517.50) 2-14-14 [65]
HCS-2

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and free and clear of liens for $490,000 the estate's interest in a real property in Carmichael, California to Church Vifezda, Inc. In addition to the purchase price, the buyer will contribute $3,340.09 to the payment of outstanding property taxes.

The trustee asks for approval of the payment of the 5% real estate broker's commission (which is $24,500 based on the $490,000 purchase price, but the broker is reducing it to $20,000) and reimbursement of the broker for expenses in preserving the property for sale, totaling $6,517.50, including maintenance and repair after the property was vandalized on several occasions. 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. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The property is subject to the following encumbrances:

- a mortgage in favor of Wells Fargo Bank for $380,000,

- a mortgage in favor of EDF Resource Capital, Inc. for $315,000, assigned to the Small Business Administration, and

- outstanding property taxes in the amount of $27,630.

The trustee is asking that the sale be approved free and clear of the Wells Fargo Bank and the SBA claims, as those claimants have agreed to accept less than the amounts of their claims.

The gross sales proceeds of $493,340.09 (consisting of purchase price $490,000 and buyer's contribution to property taxes of $3,340.09) will be distributed as follows:

- $20,000 to the estate's real estate broker, Bluett & Associates as a reduced commission,

- $6,517.50 to the estate's real estate broker as reimbursement for expenses,

- $3,088 for the seller's closing costs,

- $38,924.92 to pay property taxes from escrow,

- $335,500 to Wells Fargo Bank on account of its $380,000 claim,

- $55,000 to the SBA on account of its $315,000 claim;

- $1,388.28 to pay utilities with County of Sacramento,

- $906.72 to pay a water bill with the Sacramento Suburban Water District, and

- $32,014.67 for the bankruptcy estate.

The trustee will reduce his statutory fee from $28,250 to $4,500, counsel for the trustee will reduce his compensation from approximately $15,000 to $6,000 and the accountant will reduce his compensation from $2,500 to $1,400, permitting the sale to generate $20,114.67 for unsecured creditors.

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given the consent to the sale by Wells Fargo Bank and the SBA.

The court will approve the sale free and clear only of the claims held by Wells Fargo Bank and the SBA. The motion does not identify other claims as to which the sale could be approved under 11 U.S.C. § 363(f). The court will not approve the sale free and clear of liens that have not been identified by the motion.

The sale is in the best interests of the creditors and the estate. The court will approve the payment of the $20,000 reduced real estate commission to Bluett, as well as Bluett's reimbursement of expenses in the amount of $6,517.50, even though its expenses under the listing agreement were capped at $2,000. As Bluett advanced expenses to maintain and make repairs at the property after it was vandalized several times, the requested expenses were reasonable and necessary of preserving the estate. See 11 U.S.C. § 503(b)(1)(A).

The court will also waive the 14-day period of Rule 6004(h).

2. 11-40412-A-7 ELVA ARGUETA-PAREDES — MOTION TO AVOID JUDICIAL LIEN
DJC-1
VS. CACH, L.L.C. — 2-24-14 [21]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtor in favor of CACH, L.L.C. for the sum of $6,040.95 on July 22, 2010. The abstract of judgment was recorded with Solano County on February 8, 2011. That lien attached to the debtor's

residential real property in Vallejo, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $58,500 as of the date of the petition. See also Amended Schedule A, Docket 10. The property is unencumbered. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $58,500 in Schedule C.

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).

3. 12-37724-A-11 UDDHAV/CHRISTINE GIRI — MOTION TO CONFIRM AMENDED PLAN
DRE-19 — 10-11-13 [172]

Tentative Ruling: None.

The debtors ask the court to confirm their chapter 11 plan.

Subject to reviewing the tabulation of ballots at the hearing, and acceptance of all impaired classes, or, in the alternative proof that the plan may be confirmed consistent with the requirements of 11 U.S.C. § 1129(b), the court is prepared to confirm the plan.

4. 12-37724-A-11 UDDHAV/CHRISTINE GIRI — MOTION TO CONVERT CASE TO CHAPTER 7
UST-1 — 3-12-13 [65]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7 in the event the plan is not confirmed.

The U.S. Trustee moves for dismissal pursuant to 11 U.S.C. § 1112(b), arguing that the debtors have violated an order of the court because they paid their counsel fees for unlawful detainer action work without order of this court, the debtors have accomplished nothing since the case was filed was filed five months ago, and there is no reasonable likelihood of rehabilitation.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation . . . (E) failure to comply with an order of the court." 11 U.S.C. § 1112(b)(4)(A), (E).

The order approving the employment of the debtors' counsel D. Randall Ensminger states: "No compensation is permitted except upon court order following application pursuant to 11 U.S.C. § 330(a)." Docket 30. Nevertheless, Mr. Ensminger admits to receiving $1,250 from the debtors for the eviction of a

tenant from one of the debtors' two rental properties.

Stating that "[h]ad they or undersigned counsel realized that court permission was required it would have been requested on an emergency basis," Mr. Ensminger blames ignorance for his failure to obtain a court order approving the payment of the $1,250. Opposition at 4. Mr. Ensminger does not offer to pay back the funds received from the debtors and has made no effort to apply even for retroactive approval of the fees.

The debtors and Mr. Ensminger have violated this court's employment approval order. Docket 30.

The court notes that after the filing of this motion and after the April 19 and June 17 hearings on this motion, Mr. Ensminger has agreed to return the $1,250 he charged the debtors for the eviction work. Docket 147. Although this has mitigated in part Mr. Ensminger's violation of the employment order, the fact remains that he collected the fees in violation of the employment order and that he agreed to return them only five months after this motion was filed.

Further, the court agrees with the U.S. Trustee that there has been delay by the debtors that is prejudicial to creditors. This case was filed on October 2, 2012. This motion was filed on March 12, 2013. Prior to the filing of this motion, the debtors had not filed any valuation motions and the debtors' two cash collateral motions were dismissed by the court. Dockets 32 & 53.

The debtors filed a plan and disclosure statement on January 30, 2013, but they did not set the approval of the disclosure statement for hearing. Also, the plan and disclosure statement were filed as a single document, a total of six pages in length (Docket 63), even though the debtors are not a small business debtor. Unless the debtors are a small business debtor, they are not allowed to file the plan and disclosure statement as a single document. See 11 U.S.C. § 1125(f)(1).

More, the disclosure statement and plan have gross deficiencies on the face of the six-page document, including, without limitation, conclusory liquidation and feasibility analyses, the classification and treatment of claims is incomplete, no narrative or otherwise history of the debtors' pre-petition financial condition and what precipitated the filing, no future financial projections with stated assumptions, no discussion of how the road construction at the debtors' gas station business has affected the financial affairs of the business and no discussion of how the debtors are planning to confirm a plan given that the road construction hampering business will not be completed until August of 2014 and the debtors' monthly operating reports reflect the debtors' inability to fund a plan.

The March 2013 report reflects that the debtors have netted cumulatively a negative $2,247 during the life of this case. Docket 85.

The February 2013 report indicates that the debtors had netted cumulatively $1,763. Docket 73. According to the February 2013 report, in that month the debtors lost $4,009 and in January 2013 they lost $6,153. Docket 73. The January 2013 report (mislabeled as January 2012) indicates that the debtors had netted cumulatively a negative $3,389. Docket 64.

These figures do not take into account that the debtors have not been paying the mortgage on the gas station property. The gas station business, via the debtors' Lart Group, Inc. operator corporation, is the debtors' principal

source of income.

In reviewing the debtors' reports, the court has noticed also that the reports are inconsistent and contain contradictory information. For instance, the February 2013 report says that in the prior month (January 2013), the debtors lost $6,153, whereas the January 2013 report (mislabeled as January 2012) reflects positive net cash receipts of $3,881 and reflects the prior month's receipts (December 2012) as a negative $6,153. Docket 64. The reports are in need of some serious corrections.

The reports are deficient also in reporting the financials of the debtors' corporation, Lart Group, Inc., which runs the gas station business and makes lease payments to the debtors for use of the gas station property. The debtors use the lease payments to pay the mortgage on the property. As of the time this motion was filed, Lart had not been making any lease payments to the debtors and they had not been making any payments on account of the mortgage on the property. The lack of transparency with respect to Lart's financials is a serious concern because the debtors control whether and when Lart will make lease payments to them individually.

On the other hand, the court does not have evidence of how much income is coming into Lart and where that income is going. The only evidence the court has is that Lart has been operating the gas station business and generating some revenue, albeit not making any lease payments to the debtors, and the debtors have not been paying the mortgage on the property.

It was not until this motion was filed that the debtors agreed to prompt Lart to make "reduced" lease payments to them in the amount of $7,500.

The court does not understand why the debtors are characterizing the $7,500 in lease payments from Lart as "reduced" when the motion states that the lease payments should be in the amount of $5,500, which is the approximate amount of the mortgage on the property.

The lease payments from Lart apparently started on April 3, 2013, apparently for the first time post-petition. The debtors do not say when Lart stopped making lease payments to them pre-petition and when exactly they stopped making the mortgage payments.

The debtors predict that Lart's $7,500 in lease payments can "continue in that amount until the construction is completed and a six month period for business to return to normal is allowed for." Opposition at 2-3.

However, the court is not persuaded that Lart is able to maintain $7,500 lease payments to the debtors, given that Lart did not make lease payments for at least eight months pre-petition and the construction project inhibiting business will not be completed until August of 2014. Motion at 2, 3.

More important, while the court does not have Lart's financials, even if Lart is able to make the $7,500 of lease payments until completion of the construction project, the debtors have not explained why Lart did not make such payments for the eight months pre-petition and for the last six months post-petition. Lart is an entity the debtors own and control. Yet, they have not explained what has changed that Lart is now able to pay $7,500 a month. The construction project is still ongoing.

From the above, the court concludes that the debtors have either not been

honest about whether and to what extent Lart has been able to make lease payments to the debtors or Lart is unable to make the asserted $7,500 in payments until the construction project is completed. Either way, there is cause for conversion or dismissal of the case. If the debtors have not been honest about Lart's operation of the gas station, they have mismanaged the estate. See 11 U.S.C. § 1112(b)(4)(B). If Lart is unable to maintain the lease payments to the debtors, in light of Lart's post-petition failure to make lease payments, there is substantial or continuing loss to or diminution of the estate and an absence of a reasonable likelihood of rehabilitation. See 11 U.S.C. § 1112(b)(4)(A). The debtors have stated that their gas station business will not "return to normal" "until the [two-year] construction is completed and a six month period [after completion of the construction]." Opposition at 2-3; Docket 63 at 2.

In conclusion, the debtors' failure to obey this court's orders, the delay in obtaining plan confirmation, the lack of transparency as to Lart's financials, the lack of explanation as to how Lart is suddenly able to make $7,500 in lease payments, and the nominal positive income reported for the life of this case are cause for conversion or dismissal under 11 U.S.C. § 1112(b)(1).

As the debtors own a rental property with a value of $60,000, free and clear of any encumbrances, the court concludes that conversion to chapter 7 is in the best interest of the creditors and the estate. Schedule A. The case will be converted to a chapter 7 proceeding.

5. 11-25725-A-7 MATT/RITA OMARY — MOTION FOR RELIEF FROM AUTOMATIC STAY
GAR-1 — 1-30-14 [89]
NATIONSTAR MORTGAGE, L.L.C. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Mountain House, California.

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 February 7, 2011, the debtors filed a chapter 7 case (case no. 11-22999). But, the court dismissed that case on February 18, 2011 due to the debtors' failure to timely file petition documents. The debtors filed the instant case on March 8, 2011. 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 April 7, 2011, 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 April 7, 2011, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

6. 11-45927-A-7 RICHARD/TERESA KOOI — OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION AND MOTION TO DENY PETITION
2-11-14 [42]

Tentative Ruling: The objection will be overruled.

Creditor Clarence Kooi individually and as trustee of the Kooi 1996 Trust for Claire-Marie Kooi and the Kooi 1996 Trust for Lynda Content Kooi objects to the trustee's report of no distribution filed on February 6, 2012.

In addition to objecting to the trustee's report, Clarence Kooi also objects to the debtors' discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and (a)(4)(A), and requests that the debtors pay him at least $94,000 in attorney's fees incurred in contesting this bankruptcy petition.

To the extent this objection is an attempt by Clarence Kooi to object to the debtors' discharge pursuant to 11 U.S.C. § 727, the objection will be overruled, as such objection requires an adversary proceeding and, more importantly, as the deadline for filing such objections expired on February 7, 2012. See Fed. R. Bankr. P. 7001(4).

The court also notes that Clarence Kooi's adversary proceeding against the debtors, Adv. Proc. No. 12-2058, asserting claims under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6), as well as under 11 U.S.C. § 548, was closed on February 24, 2014, after dismissal of the claims. There are no other adversary proceedings pending in this case.

Clarence Kooi's request for attorney's fees will be denied as well, as he outlines no grounds for awarding him any attorney's fees. Clarence Kooi has not established any grounds for entitlement to attorney's fees, including, without limitation, contractual and/or statutory grounds. Even if they were to exist, the fees and costs, at least to the extent they relate to the adversary proceeding, should have been sought in the adversary proceeding and before Judge Russell.

Lastly, Clarence Kooi contends that the debtors have not disclosed all of their assets, including proceeds from the sale of homes Richard Kooi was "flipping" with other persons. Clarence Kooi claims that Richard Kooi was "flipping" homes "under the names of [entities] SRE, KPG and Michael Gorenberg, to the tune of over $500,000, and that he possessed at least $500,000 on May 31, 2011 . . . five months before declaring bankruptcy." Docket 42 at 2. This case was filed on October 31, 2011.

Clarence Kooi argues that the trustee "is entitled to look to" other persons to recover proceeds generated by the sale of homes, including Michael Gorenberg (properties on Deltawind Drive and Estuary Court) and KPG Fund, L.L.C.

(properties on Sunrock Drive and Newbury Park Court). Docket 42 at 6-10.

However, this is not a timely or valid objection to the trustee's report of no distribution, filed February 6, 2012, over two years ago. The objection to that report was due March 8, 2012, according to the notice of filing of the report. Docket 15. Any objection to that report is untimely. Also, Clarence Kooi earlier objected to that report and the court sustained it in part. Docket 30. The court will not a hear a second objection to the same report given that the report was not approved and is not before the court for approval any longer.

7.	09-43132-A-7 TSAR	OBJECTION TO
	CDH-5	CLAIM
	VS. LISA TAYLOR	8-5-13 [93]

Tentative Ruling: The objection will be stayed pending resolution of the wrongful discharge claims in the state court action.

The hearing on this objection was continued from September 23, 2013 to December 16, 2013. On November 18, 2013 the court approved a stipulation between the parties to this objection, continuing the hearing on the objection to March 10, 2014, given pending mediation between the parties. That mediation did not result in a compromise.

The trustee in this case objects to two proofs of claim by Lisa Taylor (claims 1 and 2), who is in her own chapter 7 bankruptcy case. Claim 2 - which supercedes claim 1 - asserts a general unsecured claim for $2,385,520 and a priority unsecured claim for $10,950. The claim, in its entirety, is based on six causes of action asserted by Ms. Taylor against the debtor, including:

(1) A claim for race discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act;

(2) A claim for the debtor failing to prevent discrimination under FEHA;

(3) A claim for wage and hour violations under the California Labor Code;

(4) A claim for wrongful termination under California law;

(5) A claim for intentional infliction of emotional distress; and

(6) A claim for negligent infliction of emotional distress.

The trustee in Ms. Taylor's bankruptcy case opposes the objection.

This objection to claim cannot be adjudicated absent an evidentiary hearing, as there are numerous disputed material factual issues, including, without limitation, whether the debtor discriminated against Ms. Taylor as to her compensation, terms, conditions, or privileges of employment; whether Ms. Taylor's direct supervisors, Maxine and Jacob Ritchey, left the debtor because they were removed or because they resigned voluntarily; whether Ms. Taylor was improperly classified as an exempt employee for much of her employment with the debtor; whether Ms. Taylor's discharge from the debtor was retaliatory, a discrimination or otherwise unlawful.

However, the court will abstain from adjudicating the claims asserted by Ms. Taylor.

28 U.S.C. § 1334(c)(1) provides that "[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." This is discretionary abstention.

In the Ninth Circuit, the factors that a court must consider when deciding whether to apply discretionary abstention include: (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties. Christensen v. Tuscon Estates, Inc. (In re Tuscon Estate, Inc.), 912 F.2d 1162, 1166-67 (9th Cir. 1990).

Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding").

The causes of action upon which the subject proofs of claim are based, are the subject of a pending state court litigation, involving non-debtor parties. Proof of claim 1 attaches the first page of a state court complaint filed by Ms. Taylor against the debtor in this case and against at least four other persons, who are not parties to this bankruptcy case, including "Jacob Richey, Maxine Richey, Nancy Allardyce, Does 1-10." The complaint was filed with the state court on December 2, 2009.

Further, none of the claims involve bankruptcy law. The claims are predominantly anchored in California employment law, meaning that they are non-core claims over which this court has only related to jurisdiction. Aside from liquidating the proof of claim of Ms. Taylor's bankruptcy estate in this case, the adjudication of the claims has no impact on the administration of this bankruptcy estate.

The court rejects the contention that this court may adjudicate the claims more speedily than the state court. This court does not deal with California employment law on regular basis. In any event, the court expects trial of the claims to take significantly more than the typical one-to-two day trials this court is accustomed and able to handle. And, scheduling more than a two-day trial before this court requires at least six-month advance notice at this time. In short, the nature of the claims would be a burden on this court's docket.

More, the court cannot resolve the claims asserted by Ms. Taylor against the subject debtor without adjudicating her claims against the non-debtor defendants, including, without limitation, Jacob Richey, Maxine Richey and Nancy Allardyce. The potential liability of those non-debtor parties is

closely intertwined with the potential liability of the debtor.

Hence, at best - just as with the claims against the debtor - the claims against the non-debtor parties are non-core, with the court having only related to jurisdiction over each of the claims. The claims arise under California employment law and affect only Ms. Taylor's bankruptcy estate, and only to the extent of potentially augmenting the recovery for Ms. Taylor's bankruptcy estate.

As such, then, the court would have no constitutional authority to finally adjudicate the claims against those parties. 28 U.S.C. § 157(c)(1); see also N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 88 (1982) (holding that it was unconstitutional for the bankruptcy court to enter a final judgment adjudicating state law contract claims against a party who was not otherwise a part of the bankruptcy proceeding).

Additionally, the trustee has had sufficient time to have the claims adjudicated, anywhere, in the last 20 months. This bankruptcy case was filed on October 25, 2009, nearly four years ago, and the trustee issued a notice of assets on December 21, 2009. The latter of Ms. Taylor's two proofs of claim was filed on December 29, 2009, about three months short of four years ago. The state court litigation was filed prior to December 10, 2009, when Ms. Taylor's first proof of claim was filed. Ms. Taylor filed her own bankruptcy case on January 27, 2012 - about 20 months ago - and the trustee in her case adjourned the meeting of creditors on March 7, 2012, nearly 19 months ago. This estate, however, did not seek approval for the employment of special counsel to defend Ms. Taylor's claims until June 3, 2013. Docket 65.

Given the foregoing, this court will abstain from adjudicating the causes of action asserted by Ms. Taylor against the debtor in this case. Once the claims have been adjudicated in the state court action, the trustee in this case may re-notice this objection for hearing, so the court can enter an order allowing or disallowing the proof of claim of Ms. Taylor's bankruptcy estate in accordance with the outcome of the state court action.

8. 09-43132-A-7 TSAR
CDH-6
VS. LISA TAYLOR

MOTION TO ESTIMATE CLAIM AND COUNTER MOTION TO MOTION TO ANNUL RELIEF FROM AUTOMATIC STAY
2-24-14 [127]

Tentative Ruling: The counter-motion to estimate the claim will be denied.

In the event this court does not sustain the related objection to the proofs of claim of Lisa Taylor, POCs 1 and 2, the trustee in this case is asking the court to establish a procedure for the estimation of Ms. Taylor's $2,385,520 general unsecured proof of claim. The claim also asserts $10,950 in priority wages. The trustee also asks for the court to make Fed. R. Civ. P. 68, as incorporated here by Fed. R. Bankr. P. 7068, applicable to the claim estimation procedure.

As Ms. Taylor is in her own chapter 7 case, the trustee in that case is asserting the claim on behalf of her estate.

The trustee in this case estimates that, based on the face value of the claim, Ms. Taylor's proof of claim will be entitled to 90% of the proceeds recovered by the trustee for distribution to creditors.

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

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

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

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

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

Proof of claim 2 - which supersedes proof of claim 1 - asserts a general unsecured claim for $2,385,520 and a priority claim for $10,950. The claim, in its entirety, is based on six causes of action asserted by Ms. Taylor against the debtor and other defendants, including:

(1) A claim for race discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act;

(2) A claim for the debtor failing to prevent discrimination under FEHA;

(3) A claim for wage and hour violations under the California Labor Code;

(4) A claim for wrongful termination under California law;

(5) A claim for intentional infliction of emotional distress; and

(6) A claim for negligent infliction of emotional distress.

The causes of action upon which the subject proof of claim is based, are the subject of a pending state court litigation, involving non-debtor defendants. POC 1 attaches the first page of a state court complaint filed by Ms. Taylor against the debtor and against at least four other persons, who are not parties to this bankruptcy case, including "Jacob Richey, Maxine Richey, Nancy Allardyce, Does 1-10." The complaint was filed with the state court on or about December 2, 2009.

As Ms. Taylor has sued parties other than just the debtor in state court, this court cannot estimate her proof of claim in this case without assessing the liability of those non-debtor defendants. The liability of the non-debtor parties on the claims may alter the debtor's liability on the claims, as it may

exonerate the debtor on at least some of the claims.

However, in order for the court to assess the liability of the non-debtor defendants, they would have to somehow appear and represent their interests in the claim estimation process. The court does not see how it can compel non-debtor defendants to take part in the process for estimating *in this case* the claims asserted by another party that is also not a debtor in this case.

Further, Cal. Civ. Proc. Code § 583.310 provides that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." Cal. Civ. Proc. Code § 583.360 also provides that:

"(a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute."

As the complaint in state court was filed on December 2, 2009, the five-year deadline expires in less than nine months, on December 2, 2014, meaning that unless the case goes to trial before December 2, 2014, the action might be dismissed under Cal. Civ. Proc. Code § 583.360. If the action is not dismissed, trial will have to take place at least within the next approximately eight and one-half months.

The trustee in this case then has the ability to bring this case to trial in state court in even less time than it could bring it to trial in this court. This court is not certain that trial on the claim objection can be scheduled here in less than nine months, especially given the involvement of the non-debtor defendants.

Cal. Civ. Proc. Code § 583.210(a) provides that "[t]he summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed."

Cal. Civ. Proc. Code § 583.250 also provides that:

"(a) If service is not made in an action within the time prescribed in this article:

(1) The action shall not be further prosecuted and no further proceedings shall be held in the action.

(2) The action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute."

As the state court complaint was filed over four years ago and has not been served on the debtor's estate yet, the trustee in this case may have grounds for dismissing the state court action.

Admittedly, given that two bankruptcies were filed and prevented the

prosecution of the litigation, the state court may determine that there is a basis for tolling the time requirements of sections 583.250 and 583.360. See Cal. Civ. Proc. Code § 583.140.

9. 09-43132-A-7 TSAR
DNL-2
J. HOPPER VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-10-14 [117]

Tentative Ruling: The motion will be granted.

The trustee in the chapter 7 bankruptcy case of Lisa Taylor, J. Michael Hopper, asks the court to annul the stay with respect to a complaint filed by Ms. Taylor against the debtor and other non-debtor defendants in state court on December 2, 2009. The court granted prospective relief from stay to Ms. Taylor on September 12, 2011, before she filed her own chapter 7 bankruptcy case on January 27, 2012. While the court has not yet entered an order on Ms. Taylor's prospective stay relief motion, the minutes from the September 12, 2011 hearing on the motion reflect a final ruling granting the motion. Docket 55.

The trustee in this case opposes the motion, contending that: (1) even if the claims are litigated in state court, "the parties will have to return - years later - to the bankruptcy court to adjudicate the priority status asserted by Taylor;" (2) forcing the trustee in this case to litigate the claims in state court "would be extremely prejudicial" as he would have "to start the process all over again from square one in another forum;" and (3) "the 'balance of equities' tips strongly in favor of denying the Motion to Annul as the trustee believed the claims to be settled."

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

"Courts in the Ninth Circuit have granted relief from the stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the non-bankruptcy suit involves multiple parties or is ready for trial." In re Plumberex Specialty Products, Inc. v. Truebro, Inc. (In re Plumberex), 311 B.R. 551, 556 (Bankr. C.D. Cal. 2004)(citing Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990)).

There are 12 non-exclusive factors a bankruptcy court may weigh in determining whether to lift the automatic stay to permit pending litigation to continue in another forum: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the cause of action involves the debtor as a fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) whether the debtor has insurance for its defense and possible liability; (6) whether the action essentially involves third parties; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) whether the judgment claim would be subject to equitable subordination; (9)

whether a movant's success would result in a judicial lien avoidable by the debtor; (10) judicial economy; (11) whether the action has progressed to the point where the parties are prepared for trial; and (12) the impact of the stay on the parties and the "balance of hurt." In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984); see also Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990) (cause may exist for lifting the stay, "[w]here a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues").

The debtor filed this bankruptcy case on October 25, 2009. Lisa Taylor and her counsel did not know that the subject debtor had filed for bankruptcy when they filed the state court complaint on December 2, 2009. Dockets 120 & 121. Ms. Taylor's state court counsel, Randy Harvey, did not find out about the instant bankruptcy filing until later in the day the complaint was filed, when he contacted the debtor's counsel. Docket 121 at 2.

Had Ms. Taylor applied for lifting of the stay - prior to filing the state court complaint - the court would have granted it, in order to allow the state court to liquidate her claims against the subject estate.

As mentioned in the ruling on the related countermotion to estimate by the trustee in this case, given the length of time the complaint has been pending in state court, the state court action will have to go to trial before December 2, 2014 or be dismissed. The court disagrees that "the parties will have to return - years later - to the bankruptcy court to adjudicate the priority status asserted by Taylor."

The court is not persuaded also that the trustee in this case would have to start "from square one" in state court. All the preparation for the claim objection before this court is relevant and can be used in state court to defend Ms. Taylor's claims.

The court also notes that, in the state court litigation, the debtor's estate will be represented principally by counsel paid for by insurance, as the debtor had insurance coverage for some of the claims. Thus, the financial burden on the estate should be minimal, whether the litigation is here or in state court.

Further, the adjudication of the objection to the priority portion of Ms. Taylor's proof of claim will be rather simple once the state court decides what wages, if any, are owed to Ms. Taylor and for what period of time. There will be no discovery or trial on such objection.

The court also rejects the trustee's contention that the movant is forum shopping by seeking to have the claims resolved in state court. The movant is the trustee of Ms. Taylor's estate and there was no bankruptcy estate when Ms. Taylor filed the state court action on December 2, 2009. She filed for bankruptcy only on January 27, 2012.

Additionally, the court notes that it has already granted prospective relief from stay to Ms. Taylor. As noted earlier, the court granted her stay relief motion on September 12, 2011.

Counsel for Ms. Taylor should lodge an order with the court on her stay relief motion (DCN MSW-1) within five calendar days of the March 10 hearing on this motion. See Docket 55.

Next, the trustee in this case ignores that the liability of the non-debtor

defendants would have to be resolved in the same proceeding resolving the liability of this bankruptcy estate. While the proof of claim in this case may serve as a complaint asserting claims against the debtor's estate, the proof of claim cannot be considered as a complaint asserting the claims against the non-debtor defendants.

This necessitates the resolution of all claims against all defendants, including the non-debtor defendants, in one forum, where all claims against all defendants are pending. Proceeding on the trustee's claim objection in this case - rather than the state court action - would prejudice the non-debtor defendants named in the state court action and would prevent this court from assessing their liability and its impact on the debtor's liability on the claims. The bankruptcy court does not have all claims against all defendants pending before it. The state court does however, meaning that complete resolution of the claims can be achieved only in state court at this time. Thus, annulment of the stay is warranted.

Overall, the court is persuaded that the balance of equities warrants annulment of the stay, allowing both trustees and the non-debtor defendants to litigate the claims in state court.

Finally, the court is not inclined to define Ms. Taylor's state law claims as "personal injury tort" for purposes of 28 U.S.C. § 157(b)(5), which provides that:

"The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending."

Ms. Taylor's claims arise primarily under California employment law, involving race discrimination, wrongful discharge and various statutory violations. The two traditional tort claims - one for intentional infliction of emotional distress and the other for negligent infliction of emotional distress - are derived from and based upon the other employment law claims.

Annulment of the stay will be granted solely with respect to the filing of Ms. Taylor's complaint in state court. The court has already granted prospective relief from stay with respect to the state court action. Docket 55.

When the state court litigation concludes, the trustee in this case may come back to this court for adjudication of his objection to the movant's proof of claim.

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

As the court is granting only retroactive relief from stay, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not implicated.

10.	13-25140-A-7 DNL-4	ROBERT/CHERI DOWNEY	MOTION TO EMPLOY 2-24-14 [43]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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.

The trustee seeks approval to employ The Law Offices of Moseley Collins and Thomas Minder & Associates as joint special counsel for the estate to jointly prosecute the estate's medical malpractice claims in state court. The debtors have sought damages in excess of $15 million. The estate seeks to employ Mr. Collins and Mr. Minder on a regressive contingency fee basis, including: 40% of the first $50,000 recovered (based on net recovery, defined as total award minus litigation costs, as prescribed in the motion), 33.3% of the second $50,000 recovered, 25% of the next $500,000 recovered, and 15% of any additional recovery in excess of $600,000.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. Mr. Collins and Mr. Minder are disinterested persons within the meaning of 11 U.S.C. § 327(a) and do not hold an interest adverse to the estate. Accordingly, the motion will be granted.

11. 11-40155-A-7 DWIGHT BENNETT — MOTION TO STRIKE
CLG-2 — 2-10-14 [252]

Tentative Ruling: The motion will be denied.

Creditor The Grace Foundation of Northern California asks the court to strike a declaration executed by Michael Russell, DVM (Docket 18), submitted by Wells Fargo Bank and BAC Home Loans Servicing with their motion for excusal of turnover by receiver, filed on August 25, 2011 and heard by the court on September 2, 2011. Dockets 14 & 18. The movant contends that Dr. Russell's declaration was forged, representing facts that were not true, including that the health of the debtor's horses in April 2011 was in "serious jeopardy.

The court denied the motion to excuse turnover on September 2, 2011. The court granted in part a later such motion on October 21, 2011. Dockets 46, 96, 103.

The movant also asks that the court impose an equitable lien against the debtor's real property.

Wells Fargo Bank and Bank of America, a successor in interest to BAC Home Loans Servicing, oppose the motion.

Opposition to the motion has been filed by the debtor as well.

Fed R. Civ. P. 12(f), as made applicable here by Fed. R. Bankr. P. 7012(b), provides that:

"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."

"The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. . . ." Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010). The disposition of a motion to strike lies within the discretion of the court and such motions are disfavored and infrequently granted. Garcia-Barajas v. Nestle Purina Petcare Co., No. 1:09-CV-00025 OWW DLB, 2009 WL 2151850, at *2 (E.D. Cal. July 16, 2009) (citing Legal Aid Serv. of Or. v. Legal Serv. Corp., 561 F. Supp. 2d 1187, 1189 (D. Or. 2008)).

The court will not strike the declaration filed in support of the motion to excuse turnover for several reasons.

First, the motion to strike is untimely because the court has already considered the subject declaration in adjudicating the motion.

The court cannot strike a pleading that it considered as part of the record of a motion that has been adjudicated. The court would have to first reconsider or vacate the order entered on the motion with which the pleading was submitted, before the court could even consider striking the declaration at issue.

More, striking the declaration as requested by the movant, without first reconsidering or vacating the order entered based on the record established, in part, by the declaration, would cause the court to collaterally undermine its own order disposing of the motion to excuse turnover. This makes no sense.

Stated differently, because the court has already ruled on the motion to excuse and has considered the declaration in ruling on that motion, the declaration cannot be "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). To the extent applicable, the court has considered the declaration as part of the record on the motion to excuse turnover and has ruled on that motion based on that record, including the declaration.

Second, by referring to a "defense or any redundant, immaterial, impertinent, or scandalous matter," Rule 12(f) implies that the striking of the "matter" may be done only while the matter is still actionable, *i.e.*, pertaining to the resolution of a pending dispute. Once the dispute is no longer pending, the "matter" mentioned in Rule 12(f) can no longer be relevant to the resolution of the dispute and it makes no sense to strike it.

As the subject declaration was part of a motion that has been adjudicated already and it can no longer be relevant to the resolution of a dispute, relief under Rule 12(f) is improper.

Third, the only way for the declaration at issue to have an impact that goes beyond the dispute raised in the underlying motion, is for the declaration to have some impact under the doctrines of claim preclusion, issue preclusion or judicial estoppel dispute. This is not the case here, however, as the motion now before the court makes no mention of claim preclusion, issue preclusion or judicial estoppel issues.

Moreover, the movant was not a party to the motion to excuse turnover. The only parties to the motion were the former chapter 11 debtor, the bank, and the state court receiver. Although the movant may have had standing to contest the motion to excuse turnover, the court does not see how the statements in the declaration, to the extent adopted as findings by this court, could be binding on the movant for claim preclusion, issue preclusion or judicial estoppel purposes. This makes the striking of the declaration unnecessary.

Fourth, even if the court were to deem the movant's motion as a request for reconsideration or vacating of the order entered on the motion to excuse turnover, the court cannot grant the motion.

There is no factual or legal basis in the motion for the court to reconsider its order on the motion to excuse turnover. The motion does not even attempt to brief the legal authorities permitting the reconsideration or vacating of an order.

Further, the court denied the motion to excuse turnover on September 2, 2011 without prejudice, meaning that the court did not find the motion meritorious at that time. Dockets 35 & 36. Asking the court to reconsider or vacate the order denying the motion makes no sense because by denying the motion the court implicitly did not find the subject declaration helpful.

Although the court granted in part a subsequent motion for excusal of turnover on October 21, 2011 and the court's ruling on that motion mentioned that the horses were in "seriously poor health," that is not the sole reason the court excused the receiver from the turnover requirements of 11 U.S.C. § 543. Docket 96 at 4; Dockets 18, 46, 103. Most notable was the fact that the court was granting relief from stay for the state court action to be completed and the basis for the relief from the automatic stay was the debtor's bad faith in filing this bankruptcy case. Docket 96 at 2, 4. Other factors upon which the court based its decision to excuse turnover also included: the lack of pre-petition insurance coverage for the improvements on the debtor's 40-acre property, the banks' failure to receive payments on a loan for over two years, the debtor's position in state court that the improvements should have been subject to the deed of trust securing the loan, and the debtor's overall mismanagement of the business operated on the property. Docket 96 at 3-4.

Therefore, this court is not persuaded that the outcome of the second motion to excuse turnover would change, even if the court were to agree with the movant that the banks forged Dr. Russell's declaration.

A request for reconsideration or vacating of the order entered on the motion to excuse turnover at this time is also untimely.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been

discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

The motion does not explain why it has taken over two and one-half years for the movant to even contemplate the reconsideration or vacating of the order on the excusal of turnover motion. A motion under Rule 60(b) based on reasons (1), (2) and / or (3) would be no longer timely.

Fifth, the movant's principal complaint in the motion is that this court should strike Dr. Russell's declaration because it misrepresents information pertaining to the treatment of the debtor's horses during the time the state court had appointed a receiver to oversee the care of the animals.

However, this court no longer has subject jurisdiction over any claims pertaining to the horses, given that the chapter 7 trustee obtained an order from this court abandoning the horses back to the debtor. Dockets 135 & 136; 11 U.S.C. § 554(a). And, it was the state court that appointed the receiver to oversee the care of the debtor's animals, not this court, meaning that the state court should be resolving disputes relating to alleged misconduct by the receiver and the movant's entitlement to compensation or reimbursement for the case of the houses. Hence, disputes such as these between the movant, the debtor, the receiver, and the banks should be resolved by the state court that appointed the receiver and ordered the removal of the horses.

Sixth, assuming it was possible to strike the declaration at this late date, the movant's failure to support this motion with a statement from Dr. Russell indicating that he did not authorize changes to his declaration suggests to the court that he did authorize those changes.

Finally, the court will deny the movant's request for the imposition of an equitable lien on the debtor's real property for the movant's expenses in caring for the horses. As the court noted above, the bankruptcy trustee abandoned the horses to the debtor. The movant then should look to the debtor for payment of the expenses incurred for the care of the horses.

More important, as the court recalls, the real property on which the movant seeks to impose a lien is still property of the estate. The court sees no basis for imposing a lien on estate property for expenses incurred to preserve property that no longer belongs to the estate. Further, any lien arising from the car of the horses should arguably be impressed on the horses.

And, even if there were grounds for imposing a lien on the real property, such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2), (7). The court cannot grant such relief on a motion. The motion will be denied.

12. 10-31367-A-7 KYLE/LORI KRUEGER — MOTION TO COMPEL ABANDONMENT
CLH-1 — 2-10-14 [108]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Woodbridge, California.

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.

According to the debtors, the property has a value of $472,000 - as they are selling it for $472,000 - and the encumbrances on the property total approximately $530,775, consisting of a first mortgage in favor of Citi Mortgage for approximately $312,792 and a second mortgage in favor of F&M Bank for approximately $217,983.

The debtors have exempted $7,175 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) & (5).

The court also notes that the value of the property in Schedule A is listed at $550,000.

Given the value of and encumbrances against the property and the debtors' exemption claim, and after accounting for sale costs (8% or $37,760 on a purchase price of $472,000), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

13. 13-35167-A-7 MICHAEL MARTIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 1-29-14 [13]
JPMORGAN CHASE BANK, N.A. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay with respect to a 2013 Subaru Impreza vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement

whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on November 27, 2013 and a meeting of creditors was first convened on January 2, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 27, 2013. The debtor filed a statement of intention on the petition date, but without indicating an intent to retain or surrender the vehicle and without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention on the petition date, he did not list the vehicle in the statement. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 27, 2013, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on January 2, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 27, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

14. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO AVOID JUDICIAL LIEN
BLG-3
VS. HELENA TORRE — 12-3-13 [68]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from January 27, 2014. The debtors have filed an Amended Schedule D. Docket 90. An amended ruling on the motion follows below.

A judgment was entered against the debtors in favor of Helena Torre for the sum of $92,082 on May 22, 2013. The abstract of judgment was recorded with Siskiyou County on June 5, 2013. That lien attached to the debtor's residential real property in Yreka, California (613 French Street). The debtor is seeking to avoid the lien as to that property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $90,320 as of the date of the petition. See also Docket 90. The unavoidable liens total $80,000 on that same date, consisting of a single mortgage held by Jefferson Casserly. Docket 90. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,320 in Schedule C.

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

15. 13-35475-A-7 JOSE JIMENEZ AND MARIA GONZALEZ — MOTION TO RECONSIDER
DNL-3
2-18-14 [56]

Tentative Ruling: The motion will be granted in part.

The debtors are asking the court to reconsider the February 5, 2014 order approving the employment of Coldwell Banker by the estate as a real estate broker to market and sell the debtors' real property on East Parkway. Docket 42. The debtors argue that the "order granting the sale of the property without a noticed hearing and opportunity to object, violates procedural due process of law." Docket 56 at 2. The debtors wish to retain that real property and will be seeking conversion of the case to chapter 13.

The court notes that the February 5 order reads that the trustee "is authorized to employ Broker to market and sell the bankruptcy estate's interest in" the property. Docket 42. The court agrees with the debtors that this language may be interpreted as granting the trustee authority to sell the property. That is not the relief sought in the trustee's application. Docket 30. The prayer for relief in the trustee's application asks only for the approval of the broker's employment. Docket 30 at 3.

More, the court has not held a hearing on the approval of the sale of the property, as required by 11 U.S.C. § 363(b)(1) and Fed. R. Bankr. P. 2002(a).

Accordingly, to the extent the February 5 order (Docket 42) may be interpreted as granting the trustee authority to sell the property, the order will be

vacated. The portion of the order approving the broker's employment will remain intact, however. The motion will be granted in part.

16. 13-35475-A-7 DNL-4 — JOSE JIMENEZ AND MARIA GONZALEZ — MOTION TO RECONSIDER 2-18-14 [62]

Tentative Ruling: The motion will be granted in part.

The debtors are asking the court to reconsider the February 5, 2014 order approving the employment of Coldwell Banker by the estate as a real estate broker to market and sell the debtors' real property on Azevedo Drive. Docket 41. As in their other related motion to reconsider (DCN DNL-3), the debtors argue that the "order granting the sale of the property with [*sic*] a noticed hearing and opportunity to object, violates procedural due process of law." Docket 62 at 2. The debtors wish to retain that real property and will be seeking conversion of the case to chapter 13.

The court notes that the February 5 order reads that the trustee "is authorized to employ Broker to market and sell the bankruptcy estate's interest in" the property. Docket 41. The court agrees with the debtors that this language may be interpreted as granting the trustee authority to sell the property. That is not the relief sought in the trustee's application. Docket 26. The prayer for relief in the trustee's application asks only for the approval of the broker's employment. Docket 26 at 3.

More, the court has not held a hearing on the approval of the sale of the property, as required by 11 U.S.C. § 363(b)(1) and Fed. R. Bankr. P. 2002(a).

Accordingly, to the extent the February 5 order (Docket 41) may be interpreted as granting the trustee authority to sell the property, the order will be vacated. The portion of the order approving the broker's employment will remain intact, however. The motion will be granted in part.

17. 13-30389-A-7 UST-3 — CHARLES/VICTORIA TINGLER — MOTION TO DISMISS CASE 1-30-14 [36]

Tentative Ruling: The motion will be granted and the case will be dismissed with prejudice.

The U.S. Trustee is asking the court to dismiss the case.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

11 U.S.C. § 349(a) governs the dismissal of a case "with prejudice." Leavitt v. Soto (In re Leavitt), 209 B.R. 935, 939 (B.A.P. 9th Cir. 1997). Pursuant to 11 U.S.C. § 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar discharge, in a later case under this title . . . nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title[.] . . ." 11 U.S.C. § 349(a).

"Section 349 establishes a general rule that dismissal of a case is without prejudice, but it also expressly grants a bankruptcy court the authority to 'dismiss the case with prejudice thereby preventing the debtor from obtaining a

discharge with regard to the debts existing at the time of the dismissed case, at least for some period of time.'" Id. (quoting 3 COLLIER ON BANKRUPTCY § 349.01, at 349-2-3 (15th ed. 1997)).

"'Cause' under § 349 has not been defined by the Code. A review of the case law indicates that 'egregious' conduct must be present, but that a finding of bad faith constitutes such egregiousness." Leavitt v. Soto (In re Leavitt), 209 B.R. 935, 939 (B.A.P 9th Cir. 1997). "Bad faith, which is generally held to be cause for dismissal of a case under § 1307, is also cause for dismissal with prejudice under § 349(a)." Id. (citing Morimoto v. United States (In re Morimoto, 171 B.R. 85, 86-87 (B.A.P. 9th Cir. 1994).

"To determine bad faith[,] a bankruptcy judge must review the 'totality of the circumstances.'" Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994) (quoting In re Goeb, 675 F.2d 1386, 1391 (9th Cir. 1982)).

"The bankruptcy court should consider the following factors in determining bad faith: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present." Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999) (known as Leavitt I).

Yet, a finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

On motion to dismiss or to dismiss with prejudice, the debtor bears the burden of proving that the petition was filed in good faith. Leavitt at 940. Even though this rule has been called into question by Ellsworth v. Lifescape Medical Associates (In re Ellsworth), 455 B.R. 904, 918 (B.A.P. 9th Cir. 2011), the Leavitt (known as Leavitt II) decision has not been overturned.

And, while this court is inclined to read Leavitt II and Ellsworth as requiring the moving party to at the least satisfy the burden of going forward in providing sufficient evidence of cause under section 349(a), shifting or triggering the burden of persuasion with the debtor, in this case the evidence with the motion satisfies the burden of going forward, assuming there is one.

The standard by which bad faith must be established is preponderance of the evidence. Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 634 (B.A.P. 9th Cir. 2010). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." Id. at 631 (quoting United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994)).

The U.S. Trustee is asking the court to dismiss the case due to the debtors' failure to appear at continued meetings of creditors and provide the trustee with an accounting of a $363,843 tax refund they received in 2008. The trustee continued the meeting of creditors four times, from September 9 to October 7, to November 4, to November 18 and then to December 16, 2013, in order to provide the debtors with opportunity to provide the requested accounting of the tax refund. The debtors failed to appear at any of the continued meetings. Their counsel appeared at the continued meetings informing the trustee that the debtors will not be appearing. The trustee learned that the debtors have been

named defendants in a criminal proceeding initiated by the United States Attorney for the Eastern District of California.

The movant has met her burden of going forward in establishing cause for dismissal of the case with prejudice.

The debtors' failure to cooperate with the trustee, appear at the meetings of creditors, and provide the trustee with accounting of their substantial tax refund constitutes egregious conduct by the debtors, amounting to bad faith. Such conduct is cause for dismissing the case under 11 U.S.C. § 707(a) and is cause for dismissing the case with prejudice pursuant to 11 U.S.C. § 349(a).

The debtors have not responded to the motion.

The case will be dismissed with prejudice to either of the debtors filing, or causing to be filed, any subsequent petition for relief under chapters 7, 11, 12 or 13 of Title 11 of the United States Code, in the United States Bankruptcy Court for the Eastern District of California, for a period of one year after entry of the order on this motion. The motion will be granted.

18. 14-20489-A-7 JASMINE AYALA — MOTION TO DISMISS DUPLICATE CASE 2-18-14 [12]
ALF-2

Tentative Ruling: The motion will be granted.

The debtor requests dismissal of this case on the basis that she erroneously filed two cases. The other case is Case No. 14-20484. Given the erroneous filing of the two cases, this case (Case No. 14-20489) will be dismissed. No other relief will be granted.

19. 13-35099-A-7 RAMUNDA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-3-14 [14]
JCW-1
CITIMORTGAGE, INC. VS.

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

The movant, Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Elk Grove, California.

With respect to the debtor, the property has a value of $300,000 and it is encumbered by claims totaling approximately $292,183. The movant's deed is in first priority position and secures a claim of $272,723. This leaves approximately $7,816 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated.

See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 1200, 1202 (11th Cir. 1995).

The movant also has an equity cushion of approximately $27,277. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after March 7, 2014. The trustee filed a report of no distribution on January 6, 2014 and there is nothing in the file suggesting that the case will remain open a significant period beyond March 7. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on January 6, 2014.

The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) 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) is not 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.

THE FINAL RULINGS BEGIN HERE

20. 13-27103-A-7 WESTERN WATER PRODUCTS
DMW-5

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $2,920.50, EXP. $203.33) 2-7-14 [27]

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $2,920.50 in fees and $203.33 in expenses, for a total of $3,123.83. This motion covers the period from November 21, 2013 through February 6, 2014. The court approved the movant's employment as the estate's accountant on November 25, 2013. In performing its services, the movant charged hourly rates of $325 and $345.

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 the preparation of estate tax returns and the reconstruction of a financial statement needed for the preparation of the returns.

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

21. 13-35308-A-7 DOROTHY PARENT
SLF-2

MOTION TO EXTEND TIME 1-30-14 [27]

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 moves for a 60-day extension, from January 31, 2014 to April 1,

2014, of the time to assume or reject the debtor's executory contracts, as the trustee needs additional time to review and assess the necessity of the debtor's executory contracts. This is the first request for extension of the deadline.

11 U.S.C. § 365(d)(1) provides that "In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected."

The deadline to assume or reject executory contracts may be extended more than once. See Willamette Waterfront, Ltd. v Victoria Stations Inc. (In re Victoria Station Inc.), 875 F.2d 1380, 1385 (9th Cir. 1989) (addressing unexpired leases). This is also supported by the language of 11 U.S.C. § 365(d)(1), which does not limit courts in fixing "such additional time" for the assumption or rejection of executory contracts.

The Ninth Circuit's interpretation of the language "or within such additional time as the court, for cause, within such 60-day period, fixes," is that "the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period) [and] there is no express limit on when the bankruptcy court must hear and decide the motion." Southwest Aircraft Services, Inc. v. City of Long Beach (In re Southwest Aircraft Services, Inc.), 831 F.2d 848, 850 (9th Cir. 1987) (addressing the identical language in pre-BAPCPA 11 U.S.C. § 365(d)(4)); see also Glimidakis v. Any Mountain, Ltd (In re Any Mountain, Ltd), Case Nos. NC-06-1006-JBS, 04-12989, 2006 WL 6810944 at *3-4 (B.A.P. 9th Cir. Nov. 3, 2006) (citing Southwest with approval).

"Under the section, the court's ability to extend the 60-day period is limited by a clause which includes three successive terms: 'for cause,' 'within such 60-day period,' and 'fixes.' It is not entirely clear whether the second term-'within such 60-day period'-modifies the term that precedes it or the term that follows it. If we read it as modifying 'fixes', then a bankruptcy court would not under the literal words of the statute have the authority to grant a timely motion to extend after the sixtieth day. That is the interpretation advanced by Long Beach, as well as by some bankruptcy courts in this and other cases. See In re House of Deals of Broward, Inc., 67 B.R. 23, 24 (Bankr.E.D.N.Y.1986); In re Coastal Indus., Inc., 58 B.R. 48, 49 (Bankr.D.N.J.1986); In re Taynton Freight Sys., Inc., 55 B.R. 668, 671 (Bankr.M.D.Pa.1985). If, however, the 60-day term modifies 'for cause,' then while the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period), there is no express limit on when the bankruptcy court must hear and decide the motion. This more liberal reading of the statute would allow the bankruptcy courts to operate with greater freedom and flexibility. It is the one we adopt."

Southwest Aircraft at 850.

This petition was filed on December 2, 2013. The last day of the deadline under 11 U.S.C. § 365(d)(1) expired on January 31, 2014. As this motion was filed on January 30, 2014, it is timely under 11 U.S.C. § 365(d)(1).

The trustee needs additional time to assess the estate's interest in the debtor's executory contracts, including completing an inquiry with respect to the existence of additional contracts that may require assumption or rejection.

One of the contracts the trustee is reviewing is the partnership agreement of Dooda FLP. The debtor provided the trustee with that agreement only on January 30, 2014. This is cause for the granting of the requested extension. The deadline will be extended to April 1, 2014. The motion will be granted.

22. 13-35608-A-7 DAVID LEE — MOTION TO AVOID JUDICIAL LIEN
ALB-1 — 1-30-14 [20]
VS. GOLDEN VALLEY FEDERAL CREDIT UNION

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

The motion will be granted.

A judgment was entered against the debtor in the amount of $7,399.51 on June 24, 2013, in favor of Golden Valley Federal Credit Union. Pursuant to the judgment, a writ of execution was issued on November 12, 2013 and a notice of levy for $7,707.50 was served on Financial Center Federal Credit Union on November 21, 2013, levying between $1,900 and $2,500 from the debtor's Financial Center account. Those funds have been turned over to the San Joaquin County Sheriff.

The debtor is seeking to avoid the lien that led to the levy of the funds.

The lien will be avoided pursuant to 11 U.S.C. § 522(f)(1)(A). The debtor has listed the funds in his Amended Schedule B. Docket 17. The debtor claimed an exemption in $2,500 of levied funds from the debtor's Financial Center account, pursuant to Cal. Code Civ. Proc. § 703.140(b)(5) in the amount of $8,000. Docket 17, Amended Schedule C.

The respondent holds a judicial lien created by the issuance of a writ of execution for the levy of the funds. 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 funds and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

23. 13-35916-A-7 BRANDON/VALERIE NORTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 2-5-14 [17]
WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $77,226 and it is encumbered by claims totaling approximately $187,087. 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 30, 2014. 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.

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.

24. 13-34019-A-7 LUANNE HANNA — MOTION FOR ORDER WAIVING DEBTOR EDUCATION DISCHARGE REQUIREMENT
MAC-1 — 1-29-14 [14]

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 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 passed away after filing this case and before taking a course on personal financial management as required by 11 U.S.C. § 727(a)(11). The debtor's death is not cause for the dismissal of the case. See Fed. R. Bankr. P. 1016. And, her death is a basis for waiving the requirement that she complete a course on personal financial management. See 11 U.S.C. §§ 109(h)(4) and 727(a)(11).

25. 13-34622-A-7 LONNIE NIELSON — MOTION TO EXTEND DEADLINE 1-30-14 [14]
TAA-1

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 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 a 82-day extension, from February 7, 2014 to April 30, 2014, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was February 7, 2014. The motion was filed on January 30, 2014. Thus, the motion complies with the temporal requirements of the rule.

The trustee has requested additional documents and information from the debtor, including, without limitation, information / documents about co-owned property and additional bank records. As of the date this motion was filed, the trustee had not received the requested documents and information. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to April 30, 2014.

26. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO EMPLOY 2-11-14 [108]
JB-1

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 to employ Michael Gabrielson as accountant for the estate. Mr. Gabrielson will prepare tax returns, represent the estate with the local tax authorities, and will assist the trustee in evaluating the tax impact of selling estate assets.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Gabrielson is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

27. 13-29741-A-7 BETTY MIGUEL
HSM-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $5,393.50, EXP. $16.50)
2-10-14 [36]

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 $5,393.50 in fees and $16.50 in expenses, for a total of $5,410. This motion covers the period from August 29, 2013 through March 10, 2014. The court approved the movant's employment as the trustee's attorney on September 5, 2013. In performing its services, the movant charged hourly rates of $295 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: (1) analyzing, advising the trustee about, and recovering avoidable transfers of tax refunds totaling $49,606, (2) analyzing tax returns for the recovery of estate assets, (3) analyzing the debtor's interest in PIND, Inc., (4) reviewing a stay relief motion as to a real property in Alabama, (5) advising the trustee about the Alabama property, (6)

reviewing amended schedules filed by the debtor, (7) advising the trustee about discharge 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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

28. 10-45548-A-7 KRW-1 — JOSE MORENO-ALVAREZ AND MARIA MORENO — MOTION FOR ENTRY OF DISCHARGE 2-5-14 [103]

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

The motion will be granted.

The debtors are asking the court to reenter the debtors' chapter 7 discharge.

The debtors filed this case on September 24, 2010. Their discharge was entered on January 10, 2011. But, after the trustee moved to compel the debtors to turn over to the trustee $2,485.65 in non-exempt funds, and the debtors failed to turn them over, the court entered an order holding the debtors in contempt, pursuant to a motion by the trustee. Dockets 74 & 75. As part of the contempt order, the court directed that the debtors' discharge be revoked, holding "its re-issuance in abeyance until the foregoing amounts totaling $3,711.45 [(the $2,485.65 plus $1,225.80 in attorney's fees and costs)], are paid to Mr. Nims." Docket 75 at 2.

The debtors have paid the trustee the $3,711.45 ordered by the court and are now seeking the re-issuance of their discharge.

Given the debtors' payment of the $3,711.45, and given the trustee's non-opposition to this motion, the court will order the re-entry of the debtors' discharge. The motion will be granted.

29. 14-21353-A-7 CJY-1 — SUSAN LOHEIT — MOTION TO COMPEL ABANDONMENT 2-19-14 [9]

Final Ruling: The motion will be dismissed without prejudice because it was not served on all creditors as required by Fed. R. Bankr. P. 6007(a). The proof of service for the motion indicates that only the debtor, the trustee and U.S. Trustee were served with the motion papers. Docket 13.

30. 13-21157-A-7 KEVIN/JENNIFER PERRINE MOTION TO
HSM-2 VACATE
2-4-14 [58]

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

The motion will be granted.

The trustee is asking the court:

(1) to vacate a June 16, 2013 order (Docket 33) approving the sale of two vehicles, machinery, fixtures and supplies at an auction conducted by West Auctions, pursuant to a motion asking solely for the approval of West's employment;

(2) authorizing the employment of West as auctioneer for the estate;

(3) approving retroactively the sale of the property by West as the auction sale was completed on June 27, 2013; and

(4) approving West's compensation.

After the issued a ruling granting the trustee's motion for approval of West's employment on June 3, 2013 (Docket 31), the trustee mistakenly lodged an order approving the sale of the property, which the court signed and entered on June 16, 2013 (Docket 33), even though she had not requested and the court had not granted approval of the sale to be conducted by West.

Given that the trustee mistakenly lodged the June 16 order, the court will vacate that order (Docket 33) and the trustee may submit an order approving the employment of West as prescribed by the court's ruling issued on June 3, 2013 (Docket 31).

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 of the vehicles, machinery, fixtures and supplies has generated some proceeds for distribution to creditors of the estate. The sale grossed $16,631.50, subject to West's 12% commission amounting to $1,995.78 and West's expenses for the moving, storing and securing the property in the amount of $1,555 (totaling $3,550.78).

After deducting the commission and expenses due West, the estate has netted $13,085.72 from the sale.

Hence, the sale - as conducted on June 27, 2013 - will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

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." West's services included the inventorying, securing, moving, and storing the vehicles, fixtures and supplies to be sold.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. West's compensation - as described above, including the 12% commission and reimbursement of expenses totaling $3,550.78 - will be approved.

31.	13-35475-A-7 TOG-4	JOSE JIMENEZ AND MARIA GONZALEZ	MOTION TO CONVERT CASE TO CHAPTER 13 2-18-14 [48]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(4), as the debtors have given only 20 days' notice of the hearing on the motion, even though Fed. R. Bankr. P. 2002(a)(4) requires at least 21 days' notice of the hearing on the motion. The motion was served on February 18, 2014. Docket 51.

32.	12-20779-A-7 VVF-1 HONDA LEASE TRUST VS.	LINDA KANALLY	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-10-14 [37]

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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2010 Acura CSX. The vehicle has a value of $21,331 in Schedule B and the outstanding debt under the lease agreement totals approximately $21,058. The debtor also has not made approximately two 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 also notes that the trustee filed a report of no distribution on January 8, 2014.

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

Accordingly, the motion will be granted 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.

33. 13-30783-A-7 BAYANI/CHARITO ANTONIO — MOTION TO EMPLOY
JB-1 — 2-4-14 [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 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 to employ Kristian Peter of Bankruptcy Short Sale Solutions to assist the estate with the sale of a real property in Vallejo, California. Although the property is over-encumbered, the trustee believes that the property may net a $15,000 carve-out for the estate. Mr. Peter will apply for approval of the short-sale with the mortgagee, requesting also a carve-out for the benefit of the estate. Mr. Peter along with an associate real estate broker, Mark Ponticelli, will assist the estate also with the marketing of the property for sale. The proposed compensation for Mr. Peter is a 1% commission for the negotiation of the short-sale and a 6% real estate commission for the sale of the property.

The trustee mentions that the property will be sold at an "overbid auction, subject to approval by this Court." Docket 29 at 3.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Peter is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

The court will approve the employment only of Kristian Peter of Bankruptcy Short Sale Solutions. The court will not approve the employment of anyone else, including the mentioned real estate broker Mark Ponticelli. The court cannot tell whether Mark Ponticelli is part of Bankruptcy Short Sale Solutions. Also, the court is not authorizing a sale of the property. The motion states no basis and does not ask for such relief.

34. 13-32288-A-7 RANDALL ACKERMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 1-29-14 [21]
CITIMORTGAGE, 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, CitiMortgage, Inc., seeks relief from the automatic stay as to a real property in Manteca, California.

Given the entry of the debtor's discharge on January 6, 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 has produced evidence that the property has a value of $189,900 and it is encumbered by claims totaling approximately $209,207. Docket 25. 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 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.

35. 13-28491-A-7 JAMES ENGLISH
GAR-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-14 [35]

Final Ruling: The motion will be dismissed without prejudice because the

notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3). This rule requires the notice of hearing to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Docket 36.

The notice is ambiguous as it provides that "a failure to file timely written opposition, or appear at the hearing, may result in the motion being resolved without oral argument and the striking of untimely written opposition." Docket 36.

The notice does not say whether the filing of written opposition is required, yet it strongly suggests that written opposition may be required because the motion may be "resolved without oral argument and" the court may "strik[e] [an] untimely written opposition," if no "timely written opposition" is filed. Docket 36.

The movant has given only 27 days' notice of the March 10 hearing on the motion, as the motion was served on February 11, meaning that the motion may be brought solely pursuant Local Bankruptcy Rule 9014-1(f)(2), which does not require the filing of written opposition. As the notice of hearing suggests that written opposition may be required, then, the notice violates Local Bankruptcy Rule 9014-1(f)(2). Docket 36.

And, even if the motion were brought under the alternative Local Bankruptcy Rule 9014-1(f)(1), which requires written opposition at least 14 days prior to the hearing on the motion, the notice of hearing would violate that rule as well, given that the notice does not state when written opposition must be filed. Docket 36. Accordingly, the motion will be dismissed without prejudice.

36. 13-33291-A-7 DOUGLAS/SANDRA JOHNSON — MOTION TO AVOID JUDICIAL LIEN
AJJ-1
VS. AMERICAN EXPRESS BANK, F.S.B. — 2-4-14 [19]

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

The motion will be granted.

A judgment was entered against Debtor Douglas Johnson in favor of American Express Bank for the sum of $6,672.08 on January 4, 2013. The abstract of judgment was recorded with Placer County on March 25, 2013. That lien attached to the debtor's residential real property in Rocklin, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $538,554 as of the date of the petition. The unavoidable liens total $450,879.34 on that same date, consisting of:

- a property tax lien for $2,146 held by Placer County Tax Collector,
- a first mortgage for $210,402 held by Bank of America,
- a second mortgage for $75,412 held by The Golden 1 Credit Union,
- a federal tax lien for $1,813.47 held by the IRS,
- a federal tax lien for $54,894.76 held by the IRS,
- a federal tax lien for $19,978.79 held by the IRS,
- a federal tax lien for $43,250.01 held by the IRS,
- a state tax lien for $42,982.31 held by the California FTB.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C.

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).

37. 13-33291-A-7 DOUGLAS/SANDRA JOHNSON — MOTION TO AVOID JUDICIAL LIEN
AJJ-2
VS. CITIBANK (SOUTH DAKOTA), N.A. — 2-4-14 [24]

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

The motion will be granted.

A judgment was entered against Debtor Sandra Johnson in favor of Citibank for the sum of $5,605.10 on February 25, 2011. The abstract of judgment was recorded with Placer County on May 18, 2011. That lien attached to the debtor's residential real property in Rocklin, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $538,554 as of the date of the petition. The unavoidable liens total $450,879.34 on that same date, consisting of:

- a property tax lien for $2,146 held by Placer County Tax Collector,
- a first mortgage for $210,402 held by Bank of America,
- a second mortgage for $75,412 held by The Golden 1 Credit Union,
- a federal tax lien for $1,813.47 held by the IRS,
- a federal tax lien for $54,894.76 held by the IRS,
- a federal tax lien for $19,978.79 held by the IRS,
- a federal tax lien for $43,250.01 held by the IRS,
- a state tax lien for $42,982.31 held by the California FTB.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C.

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).

38. 13-33291-A-7 DOUGLAS/SANDRA JOHNSON — MOTION TO AVOID JUDICIAL LIEN
AJJ-3
VS. DISCOVER BANK — 2-4-14 [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 respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against Debtor Sandra Johnson in favor of Discover Bank for the sum of $13,927.35 on June 13, 2012. The abstract of judgment was recorded with Placer County on July 27, 2012. That lien attached to the debtor's residential real property in Rocklin, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $538,554 as of the date of the petition. The unavoidable liens total $450,879.34 on that same date, consisting of:

- a property tax lien for $2,146 held by Placer County Tax Collector,
- a first mortgage for $210,402 held by Bank of America,
- a second mortgage for $75,412 held by The Golden 1 Credit Union,
- a federal tax lien for $1,813.47 held by the IRS,
- a federal tax lien for $54,894.76 held by the IRS,
- a federal tax lien for $19,978.79 held by the IRS,
- a federal tax lien for $43,250.01 held by the IRS,
- a state tax lien for $42,982.31 held by the California FTB.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C.

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).

39. 10-30993-A-7 LEONARD/NELLIE GABBUAT
CWC-6

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $4,712.50)
2-4-14 [49]

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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $4,712.50 in fees and $0.00 in expenses. This motion covers the period from May 27, 2011 through January 16, 2014. The court approved the movant's employment as the estate's accountant on June 30, 2011. In performing its services, the movant charged hourly rates of $150, $175, $250.

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 the review of prior tax returns and the preparation of 2010, 2011, 2012 and 2013 estate tax returns.

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

40. 10-30993-A-7 LEONARD/NELLIE GABBUAT
CWC-7

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $10,793, EXP. $472.88)
2-4-14 [55]

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.

Carl Collins, attorney for the trustee, has filed its first and final motion

for approval of compensation. The requested compensation consists of $10,793 in fees and $472.88 in expenses, for a total of $11,265.88. This motion covers the period from July 28, 2010 through January 28, 2014. The court approved the movant's employment as the trustee's attorney on August 3, 2010. In performing its services, the movant charged hourly rates of $90 and $295.

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 assets for administration, (2) analyzing the administration of real property co-owned by the debtor, (3) preparing and prosecuting adversary proceeding for the sale of the co-owned property, (4) negotiating a settlement for the sale of the estate's interest in the property to a family trust, (5) preparing and prosecuting motion for approval of the settlement, (6) addressing title issues raised by the title company handling the sale, and (7) 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.

41. 13-24996-A-7 PATRICK/KRISTI MORIN — AMENDED MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $1,657.50, EXP. $138.75) 2-4-14 [45]
SMD-2

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,657.50 in fees and $138.75 in expenses, for a total of $1,796.25. This motion covers the period from October 21, 2013 through January 31, 2014. The court approved the movant's employment as the estate's accountant on October 22, 2013. In performing its services, the movant charged an hourly rate of $325.

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 the preparation of 2013 estate tax returns.

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