UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 24, 2014 at 10:00 a.m.

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

1, 3, 4, 5, 8, 9, 10, 14, 16, 19, 21,

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 21, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 7, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 14, 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. 13-35308-A-7 DOROTHY PARENT — MOTION TO EMPLOY
HCS-2 — 2-24-14 [38]

Tentative Ruling: The motion will be granted.

The trustee requests approval to employ Ronald Nakano of Coldwell Banker as a real estate broker for the estate. Mr. Nakano will assist the estate with the valuing, marketing and potentially listing the sale of two real properties in Sacramento, California and two timeshares in Stateline, Nevada.

The motion had requested that Mr. Nakano be employed to value, market and possibly list other real property, but that part of the motion has been dismissed by the trustee. Docket 55. An opposition to the motion leading to the partial dismissal of the motion has been also dismissed. Dockets 47 & 55.

Mr. Nakano will be compensated at a six percent (6%) commission of the gross sales price or five (5%) percent if he is the only broker involved in the sale. Docket 43.

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. Nakano is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate.

2. 14-21312-A-7 ALBERT VILLELA AND SANGITA WATI — MOTION FOR RELIEF FROM AUTOMATIC STAY
ADR-1 — 2-19-14 [17]
WILLIAM HEINZ VS.

Tentative Ruling: The hearing on this motion will be continued.

The movant, William Heinz, seeks relief from the automatic stay as to a real property in Tracy, California. The movant is the legal owner of the property and the debtors leased the property. The debtors defaulted under the lease agreement in October 2013 and have not paid any rent since then. The debtors filed the instant case on February 12, 2014.

The movant seeks relief from stay to exercise his rights under state law to obtain possession of the property.

The debtors have filed a response to the motion, asking for the court not to grant the motion without giving them an opportunity for oral argument. The debtors cannot attend the hearing on this motion because their initial meeting of creditors is scheduled in Modesto, California on March 24, 2014 at 10:00 a.m., the same date and time this motion is set for hearing in Sacramento, California.

Given that the debtors' meeting of creditors conflicts with the hearing on this motion, the hearing on this motion will be continued.

However, the written record on this motion has closed. No one will be allowed

to file further pleadings, including evidence, in connection with this motion, as this motion was brought under Local Bankruptcy Rule 9014-1(f)(1) and all responses to the motion were due 14 days prior to the March 24 hearing. At the continued hearing on this motion, the court will entertain only oral argument. The court will take no evidence or further pleadings at the continued hearing.

3. 13-30013-A-7 JON/FAITH PARMER — MOTION FOR ADMINISTRATIVE EXPENSES
MPD-4 — 3-3-14 [48]

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

The motion will be granted.

The trustee requests the allowance of a one-time $3,000 administrative expense claim to Mike Boban Construction, Inc., for the August 2013 post-petition installation of an access ladder at a commercial building in Redding, California (307 & 333 Park Marina).

11 U.S.C. § 503(b) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate." This requires the claim to be (1) incurred post-petition, (2) be an actual and necessary expense, and (3) directly and substantially benefit the estate. In re Lazar, 207 B.R. 668, 674 (Bankr. C.D. Cal. 1997) (citing Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) and Burlington N. R.R. Co. v. Dant & Russell (In re Dant & Russell), 853 F.2d 700, 706 (9th Cir. 1988)).

The subject building is owned by the estate and generates in excess of $2,000 a month in positive income. The ladder installation was necessary because the debtors replaced an air-conditioning unit on the roof of the property (at 333 Park Marina), but before signing off on the job, the City of Redding required the installation of the ladder. Although the debtors contracted with Mike Boban pre-petition, in early July 2013, this case was filed on July 31, 2013 and the work was not performed until August.

The claim was incurred post-petition and it was an actual and necessary expense, as it was required for the new roof air-conditioning permit to be issued. If the ladder was not installed, the City of Redding would have likely shut down the business conducted in the building, leading to the eventual elimination of the income generated by the building. The ladder has directly and substantially benefitted the estate. The court will allow the claim. The motion will be granted.

4. 11-44616-A-7 LOYD/VERNA HOSTETTER — MOTION FOR AUTHORITY TO OPERATE BUSINESS
DNL-3 — 3-10-14 [64]

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

The motion will be granted.

The trustee is asking the court for authority to continue to sublease a real property in Grass Valley, California.

11 U.S.C. § 721 provides that "[t]he court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."

The property is owned by a third party to which the debtors have been paying $2,500 a month on account of a long-term lease. In turn, the debtors have been collecting $3,600 a month from another party on account of a sublease agreement. The debtors have been generating approximately $1,100 a month from their subleasing of the property. Now that the debtors have disclosed their interest in the property and the lease and sublease agreements, the trustee desires to start collecting the sublease payments, making the lease payments, and maintaining the property, while she determines the best way to liquidate the estate's interest in the lease and sublease agreements.

Accordingly, the proposed operation is in the best interest of the estate and is consistent with the orderly liquidation of the estate's interest in the property and the estate in general.

The trustee may operate the property and pay post-petition expenses associated with the operation of the property in the ordinary course of business (*e.g.*, maintenance costs, utilities, insurance). The authority to operate shall end the earlier of December 31, 2014 or when the estate's interest in the property is sold. The motion will be granted.

5. 13-23718-A-7 DARREN HANCOCK — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBB-1 — 2-21-14 [50]
BANK OF AMERICA, N.A. VS.

Tentative Ruling: The motion will be granted in part.

The movant, Bank of America, seeks relief from the automatic stay and determination that the stay has dissolved under 11 U.S.C. § 362(c)(3), as to a 2006 Ford F350.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and

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

On March 10, 2009, the debtor filed a chapter 13 case (case no. 09-24069). But, the court dismissed that case on October 24, 2012 due to the debtor's failure to make plan payments. The debtor filed the instant case on March 20, 2013. The chapter 13 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.

The motion will be granted in part. The automatic stay in the instant case expired in its entirety as to the subject property on April 19, 2013, 30 days after the debtor 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).

The court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on April 19, 2013, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

As the stay has expired, the court cannot grant relief from stay as well. There is no automatic stay to be lifted. This part of the motion will be denied.

6. 12-36729-A-7 MICHAEL/NAOMI ALFORD — MOTION TO SELL
DNL-11 — 3-3-14 [128]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $4,000 the estate's apparently unencumbered interest in three Seatrain 40-foot containers to Andco Farms, Inc. While the debtors have claimed an exemption of $1,650 in the containers, the trustee expects that the debtors will be reducing their exemption claim to $14.00, as the debtors have consumed a non-exempt tax refund in the amount of $1,636.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

7. 12-36729-A-7 MICHAEL/NAOMI ALFORD — MOTION TO SELL
DNL-9 — 3-3-14 [123]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $4,000 the estate's apparently unencumbered interest in a portable swim spa, consisting of a gazebo and sauna, to Andco Farms, Inc. The debtors have claimed an exemption of $550 in the spa.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

8. 13-32630-A-7 WILLIAM/KATHARINA HEAD — MOTION TO AVOID JUDICIAL LIEN
RWH-1
VS. ADDISON AVENUE FEDERAL CREDIT UNION — 1-3-14 [19]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Addison Avenue Federal Credit Union for the sum of $19,566.31 on January 28, 2009. The abstract of judgment was recorded with Placer County on August 4, 2009. That lien attached to the debtor's residential real property in Roseville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of $221,000 as of the date of the petition. The unavoidable liens total $153,402 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended Schedule C. Docket 34.

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).

9. 13-32630-A-7 WILLIAM/KATHARINA HEAD — MOTION TO AVOID JUDICIAL LIEN
RWH-2
VS. GCFS — 1-3-14 [24]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from January 27 for the movant to amend schedules. The movant amended Schedule C to increase the exemption in the property to $100,000 on February 14, 2014. The court notes that no objections were filed to the amended exemption. An amended ruling from Janaury 27 on the motion follows below.

A judgment was entered against the debtor in favor of GCFS, Inc. for the sum of $16,005.80 on October 16, 2011. The total amount of the lien as of the petition date was $18,668. The abstract of judgment was recorded with Placer County on November 18, 2011. That lien attached to the debtor's residential real property in Roseville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of $221,000 as of the date of the petition. The unavoidable liens total

$153,402 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended Schedule C. Docket 34.

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).

10. 13-34437-A-7 ROBERT KELLER — MOTION TO DISMISS CASE
UST-1 — 2-19-14 [15]

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

The U.S. Trustee moves for dismissal because the debtor did not attend the creditors' meetings held on January 29 and February 12, 2014. The debtor also failed to provide the trustee with pay advices as mandated by 11 U.S.C. § 521(a)(1)(B)(iv).

The debtor's failure to appear at the creditors' meetings and failure to provide the pay advices has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

11. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-2
VS. CACV OF COLORADO, L.L.C. — 2-10-14 [23]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from February 24 in order for the movant to amend Schedule C. Schedule C was amended on February 20 and an amended ruling from February 24 follows below.

A judgment was entered against the debtor in favor of CACV of Colorado, L.L.C. for the sum of $7,767.74 on May 26, 2006. The abstract of judgment was recorded with San Joaquin County on July 5, 2006. That lien attached to the debtor's residential real property in Manteca, 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 $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $3.00 in Second Amended Schedule C. Docket 44.

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).

Finally, the court will deny the request for "costs of suit." The motion states no basis for such relief. There is no contract or statute cited by the debtor permitting the recovery of attorney's fees and/or costs for the bringing of this motion.

12. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-3
VS. N. CA COLLECTION SERVICE, INC. — 2-10-14 [28]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from February 24 in order for the movant to amend Schedule C. Schedule C was amended on February 20 and an amended ruling from February 24 follows below.

A judgment was entered against the debtor in favor of Northern California Collection Service, Inc. for the sum of $6,094.27 on November 4, 2009. The abstract of judgment was recorded with San Joaquin County on December 7, 2009. That lien attached to the debtor's residential real property in Manteca, 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 $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $3.00 in Second Amended Schedule C. Docket 44.

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).

Finally, the court will deny the request for "costs of suit." The motion states no basis for such relief. There is no contract or statute cited by the debtor permitting the recovery of attorney's fees and/or costs for the bringing of this motion.

13. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-4
VS. UNIFUND CCR PARTNERS — 2-10-14 [33]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from February 24 in order for the movant to amend Schedule C. Schedule C was amended on February 20 and an amended ruling from February 24 follows below.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of $17,165.01 on April 10, 2009. The abstract of judgment was recorded with San Joaquin County on February 16, 2010. That lien attached to the debtor's residential real property in Manteca, 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 $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $3.00 in Second Amended Schedule C. Docket 44.

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).

Finally, the court will deny the request for "costs of suit." The motion states no basis for such relief. There is no contract or statute cited by the debtor permitting the recovery of attorney's fees and/or costs for the bringing of this motion.

14. 10-42450-A-7 ROBERT MATTHEWS — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $2,740) 2-28-14 [125]
MJO-3

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

The motion will be granted.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $2,740 in fees and $0.00 in expenses. This motion covers the period from January 24, 2014 through February 17, 2014. The court approved the movant's employment as the estate's accountant on February 5, 2014. In performing its services, the movant charged hourly rates of $175 and $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 preparing estate tax returns and preparing letters to the tax authorities and the trustee, about each tax year.

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

15. 12-22251-A-7 JUAN/CLAUDIA RUELAS
SBS-2
VS. FRESNO TRUCK CENTER, INC.

MOTION TO
AVOID JUDICIAL LIEN
2-24-14 [47]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Juan Ruelas in favor of Fresno Truck Center, Inc. for the sum of $55,437.27 on February 11, 2010. The abstract of judgment was recorded with San Joaquin County on June 4, 2010. According to the motion, that lien attached to five real properties in Stockton, California (2336/2326 Vail St., 342 S. Cardinal Ave., 351 S. Cardinal Ave., 615/617 E. Channel, 619/621 E. Channel). The debtor is seeking avoidance of the lien on all five real properties.

The motion will be denied because, while the debtor has now amended Schedule C to claim exemptions in each of these properties, the values of the properties in the motion is different from the values of the properties in the Amended Schedules A and C. Docket 45. For instance, the value of 342 S. Cardinal Ave. in the motion is $102,200, whereas in the Amended Schedules A and C, the value of that property is $1,959,022.22. Dockets 35 & 45. There is a discrepancy as to the value of each of the other properties. The court will not address the merits of the motion until the values of the properties are corrected.

The court also notes that there is only one encumbrances listed in Schedule D against 342 S. Cardinal Ave., a mortgage for $195,355.89, meaning that the encumbrances cannot be $1,959,022.22. Docket 18.

Further, the motion will be denied also because the debtors' valuation of each of the properties is based on "real estate agents that [they] have worked with who [*sic*] have sold and or have placed similar properties for sale in the past few months." Docket 49 ¶ 2. If the valuation for each of the properties is not based on the debtors' opinion of value as owners of the properties, but it is based on what real estate agents have told them is the value of each property, the valuations are inadmissible hearsay. Fed. R. Evid. 802.

More, the debtors have not been qualified to render expert opinion about the values of the properties. They are not real estate appraisers or agents. Fed. R. Evid. 701, 702; Docket 49. Thus, they cannot testify about the value of each property as anything other than owners. The motion will be denied without prejudice.

16. 14-21353-A-7 SUSAN LOHEIT
CJY-2

MOTION TO
COMPEL ABANDONMENT
3-10-14 [15]

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 debtor requests an order compelling the trustee to abandon the estate's interest in a day care business, Susan's Daycare.

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 motion, the business assets include the name of the business, toys, games and food inventory. The assets have a value of $600 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

17. 13-35654-A-7 SOLO/MICHELLE LAPURGA — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1
WELLS FARGO BANK, N.A. VS. — 2-11-14 [14]

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

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

With respect to the debtor, the property has a value of $147,500 and it is encumbered by claims totaling approximately $134,380. The movant's deed is the only encumbrance against the property. This leaves approximately $12,619 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 has an equity cushion of approximately $12,619. 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 24, 2014, the hearing date for this motion. The trustee filed a report of no distribution on January 22, 2014 and there is nothing in the file suggesting that the case will remain open a significant period beyond March 24, 2014. 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 22, 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.

18. 14-20079-A-7 STEVEN BROWN
RCS-1

MOTION TO DISMISS DUPLICATE CASE
1-26-14 [13]

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

The debtor requests dismissal of this case on the basis that he erroneously filed two cases. The debtor also asks for return of the filing fee paid in this case. The other case is Case No. 14-20046. Given the erroneous filing of the two cases, this case (Case No. 14-20079) will be dismissed. No other relief will be granted.

The court will not refund the filing fee. Every time a case is filed, whether erroneously or on purpose, the court performs substantial work, including opening a file, assigning a case manager, issuing numerous notices, calendaring motions and other matters, reviewing petition documents for completeness, etc. And, the debtor has not shown that the mistake in the filing of the duplicative case lies with the court. Accordingly, the filing fee will not be refunded.

Filing fees pay for the court's and the clerk's administration of filed petitions. Because a petition is filed in error it does not mean the court and the clerk will ignore it. A duplicative petition must be processed like every other petition. A trustee must be assigned, an electronic file must be opened and maintained, a meeting of creditors must be set, service must be made on the trustee, United States Trustee, and other parties in interest, etc.

Because every petition filed, including a duplicative petition, triggers this process, the Judicial Conference of the United States Courts prohibits court clerks from refunding filing fees. See JCUS-Sep 49, p. 202; JCUS-Sep 48, p. 30-31.

There are two exceptions to this "no refund" policy. The court will permit a refund when a duplicative filing is the result of an error in the court's electronic filing system/software. If fault lies with the filer, no refund will be issued unless the second exception applies. This first exception does not apply to the facts of this case.

Counsel for the debtor was the one who submitted this second petition in error. Docket 15.

The second exception comes into play whenever the clerk discovers the duplicative filing in time to avoid charging the fee. In such instances, the clerk will advise the filer to immediately file a motion to dismiss the duplicative case. If such a motion is filed seasonably, the court will order the clerk to not collect the fee. Here, the clerk collected the fee and did not discover the error before collecting the fee.

19. 12-29790-A-7 TROY/JENNIFER MALLICOAT
TGM-4

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $26,398, EXP. $205.79)
3-3-14 [59]

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

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

The motion will be granted.

Boutin Jones Inc., attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $26,398 in fees and $205.79 in expenses, for a total of $26,603.79. This motion covers the period from September 25, 2013 through the present. The court approved the movant's employment as the trustee's attorney on October 2, 2013. In performing its services, the movant charged hourly rates of $275 and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing the estate's interest in a trust, (2) researching and reviewing legal authority pertaining to exemption objections, (3) preparing and prosecuting exemption objections, (4) negotiating with the debtors and the trust about the estate's interest in the trust, (5) preparing settlement agreement with the debtors and the trust, (6) preparing and prosecuting a compromise approval motion, 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.

20. 13-28491-A-7 JAMES ENGLISH — MOTION TO SELL
KJH-2 — 3-1-14 [48]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $4,000 the estate's apparently unencumbered interest in two trucks, a 2005 Ford F150 and 2007 Toyota Tacoma to Grant Smith.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

21. 13-28491-A-7 JAMES ENGLISH — MOTION TO ABANDON
TGM-2 — 2-27-14 [44]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Rocklin, California. The property is over-encumbered.

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

The property has a scheduled value of $325,000, whereas its encumbrances total approximately $449,932, consisting of a single mortgage in favor of Deutsche Bank National Trust Company. Dockets 28 & 37. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

22. 13-34696-A-7 JEFFREY JOHNSON — MOTION TO SET ASIDE O.S.T. 3-13-14 [81]
JBJ-4

Tentative Ruling: The motion will be denied.

The debtor is asking the court to set aside his chapter 7 discharge entered on March 4, 2014. The motion is brought pursuant to Fed. R. Civ. P. 60(b).

The motion will be denied.

First, there is no factual or legal basis for setting aside the debtor's discharge under Rule 60(b).

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."

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The grounds for the motion are that the debtor was surprised at the entry of chapter 7 discharge, that he desires to proceed in a chapter 13 proceeding to protect the "little assets" he has and to maintain a better credit score, and that his motion to convert would not be heard unless his discharge is set

aside. Docket 83.

None of the foregoing is basis for relief under Rule 60(b). There was no surprise or inadvertence on the part of the debtor in connection with the entry of his discharge.

The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15. The entry of discharge on March 4, 2014 could not have been a surprise to the debtor.

More, the debtor had filed a motion to convert the case on January 24, 2014, which was heard and denied on February 24. Dockets 50, 68, 73. The debtor also filed a personal financial management course certificate on February 12, 2014. Docket 60. The debtor therefore was obviously aware of the date when the discharge would be entered. The debtor did not file another motion to convert the case until March 4, when the discharge was entered. Docket 75. The court also notes that the debtor did not file a motion to delay the entry of discharge.

The court entered the debtor's discharge timely, after the debtor filed his personal financial management course certificate, after his first conversion motion was denied, and before the debtor's second conversion motion appeared on the docket. The entry of discharge was not a mistake and there was no surprise, or excusable neglect warranting the setting it aside. Newly discovered evidence, fraud, misrepresentation or misconduct are not implicated either.

Second, revocation of discharge under 11 U.S.C. § 727 can be granted only in an adversary proceeding and only if:

"(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section [refusing to obey order or respond to a material question]; or

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586 (f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586 (f) of title 28."

11 U.S.C. § 727(d); Fed. R. Bankr. P. 7001.

None of the bases under 11 U.S.C. § 727(d) apply here and this is a motion and not an adversary proceeding.

Third, 11 U.S.C. § 727(d) allows only a trustee, creditor, or the United States Trustee to seek revocation of the debtor's discharge. The debtor is not one of the enumerated parties in 11 U.S.C. § 727(d).

The motion will be denied.

23. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION FOR RELIEF FROM AUTOMATIC STAY
KMR-3 — 9-3-13 [79]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

Tentative Ruling: The motion will be denied in part without prejudice and dismissed in part as moot.

The hearing on this motion was continued from January 27, 2014. The trustee has filed a supplemental opposition to the motion. An amended ruling from January 27 follows below.

The movant, Federal National Mortgage Association, moves for relief from stay as to a real property in Folsom, California. The movant contends that the value of the property is $320,000, whereas the encumbrances total $365,754.

However, the trustee has filed an opposition, stating that she is actively marketing the property for sale. The trustee has obtained an appraisal stating that as of March 13, 2014 the property has a value of $465,000. Docket 131.

This means that the property has approximately $100,000 in equity, meaning that relief under 11 U.S.C. § 362(d)(2) is not proper. Relief under 11 U.S.C. § 362(d)(1) is not appropriate either because the movant has an equity cushion of at least $165,000, adequately protecting its interest in the property. The movant's claim, which is in first priority position, totals approximately $290,000.

The motion will be denied as to the estate.

As to the debtors, given the entry of their discharge on August 16, 2013, 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 debtors, the motion will be dismissed as moot.

FINAL RULINGS BEGIN HERE

24. 08-37910-A-7 MARK JOCOY
DNL-6

MOTION FOR AUTHORITY TO LEASE ESTATE PROPERTY
2-24-14 [91]

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 to approve an agreement for the lease of a condominium in Mexico - in which the estate owns one-half interest along with Jonathan Brickner - with San Felipe Beach Rentals. SFBR will receive a 35% commission for its services.

The leasing of the property will take place while the trustee is marketing it for sale. The realtor for the property has represented to the trustee that sales "ha[ve] been very slow over the last 4-5 years."

The motion is brought pursuant to 11 U.S.C. § 363(b)(1), which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

By seeking to lease the property, the trustee is also seeking to "operate" the property within the meaning of 11 U.S.C. § 721, which provides that "[t]he court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."

Initially, the court notes that the trustee and Mr. Brickner reached a settlement, which the court has approved already, over the disposal of the property and the division of the sale proceeds. Under the settlement, the trustee has the authority to sell the property while Mr. Brickner will receive 50% of the net sale proceeds, along with a $150,000 general unsecured proof of claim against the estate, less the 50% of the net sale proceeds received by Mr. Brickner.

The trustee desires to sell a condominium property that is located in Mexico. The marketing period may last months before a sale is consummated. Leasing of the property while it is being marketed then is in the best interest of the estate. The net lease income will help the trustee defray some of the costs associated with the property while it is being marketed.

Accordingly, the proposed leasing is in the best interest of the estate and is consistent with the orderly liquidation of the condominium and the estate in general.

The trustee may lease the property and pay post-petition expenses associated with the leasing of the property in the ordinary course of business (SFBR's

fees, etc.). The authority to lease shall end the earlier of December 31, 2014 or when the property is sold (*i.e.*, when escrow closes). The motion will be granted.

This ruling does not permit the payment of any pre-petition claims (taxes, HOA fees, etc.).

25. 13-27715-A-7 CALIFORMACY INC. MOTION TO
MDM-3 ABANDON
2-12-14 [93]

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 wishes to abandon the estate's interest in personal property listed on Exhibit B attached to the subject motion, including, without limitation, four glass display cases, built-in countertops, shelves, drawers, pharmacy shelving, flat screen monitors, printers, cabinets, drawers, ladder, cash register, photo equipment, a credit card machine, and a security system. Docket 93.

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

The trustee has submitted a declaration representing that the property is of inconsequential value to the estate. After considering the costs of pick-up, transportation and sale, he believes that the property will not yield a consequential benefit to the estate. Also, many of the property items are fixtures attached to the real property and cannot be removed. Docket 95.

Given this, the court concludes that the property items listed in Exhibit B to the motion (Docket 93) are of inconsequential value to the estate. The motion will be granted.

26. 13-27117-A-7 DAVID/VICTORIA EHRHARDT MOTION TO
MTM-3 AVOID JUDICIAL LIEN
VS. GCFS, INC. 2-18-14 [60]

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 David Ehrhardt in favor of GCFS, Inc. for the sum of $22,633.17 on October 12, 2012. The abstract of judgment was recorded with Amador County on November 27, 2012. That lien attached to the debtor's residential real property in Jackson, 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 $170,000 as of the date of the petition. The unavoidable liens total $185,172.64 on that same date, consisting of a single mortgage in favor of American River Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 57.

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).

27. 14-20621-A-7 ROBERT WENZLER — MOTION TO AVOID JUDICIAL LIEN
SG-1
VS. GOLDEN 1 CREDIT UNION — 1-28-14 [8]

Final Ruling: The motion will be dismissed without prejudice.

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

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

Finally, the motion asks the court to expunge the subject lien, without citing any legal authority for such relief. The court is not familiar with any legal authority permitting the expungement of a lien on a motion. See Fed. R. Bankr. P. 7001(2). Thus, even if the court had reached the merits of the motion, it would have been denied.

28. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWU-1
MOHAMMAD NAYIBKHIL VS. — 2-25-14 [112]

Final Ruling: The movant has provided only 27 days' notice of the hearing on

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

29. 14-20836-A-7 WESLEY/H WEBB — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRG-1 — 2-24-14 [9]
THE BANK OF NEW YORK MELLON 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, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Bangor, California. The property has a value of $275,000 and it is encumbered by claims totaling approximately $501,446. The movant's deed is in first priority position and secures a claim of approximately $474,446.

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. 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.

30. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-4
VS. FIA CARD SERVICES, N.A. — 2-14-14 [40]

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 the debtor in favor of FIA Card Services, NA for the sum of $22,073.10 on November 10, 2011. The abstract of judgment was recorded with Solano County on January 24, 2012. 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 $270,000 as of the date of the petition. The unavoidable liens total $377,000 on that same date, consisting of a single mortgage in favor of Bank of America Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $9,282 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).

31. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-5
VS. CITIBANK, N.A. — 2-14-14 [44]

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 the debtor in favor of Citibank for the sum of

$22,146.87 on November 3, 2011. The abstract of judgment was recorded with Solano County on December 20, 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 $270,000 as of the date of the petition. The unavoidable liens total $377,000 on that same date, consisting of a single mortgage in favor of Bank of America Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $9,282 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).

32. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-6
VS. AMERICAN EXPRESS CENTURION BANK — 2-14-14 [48]

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 the debtor in favor of American Express Centurion Bank for the sum of $20,140.34 on April 26, 2011. The abstract of judgment was recorded with Solano County on June 3, 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 $270,000 as of the date of the petition. The unavoidable liens total $377,000 on that same date, consisting of a single mortgage in favor of Bank of America Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $9,282 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).

33. 12-20944-A-7 SANDRA KELLEY — MOTION TO EMPLOY
TAA-2 — 2-18-14 [31]

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

The motion will be granted.

The trustee is asking the court to employ and compensate Douglas & London, the law firm which represented the debtor in now-settled litigation "for injuries related to medication." Docket 29.

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) interviewing the debtors, (2) preparing the complaint, (3) filing the state court litigation, (4) conducting extensive discovery, (5) appearing at court hearings.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The debtor did not disclose the litigation when this case was filed and before she obtained her discharge and the case was closed. D&L was not aware of this bankruptcy case in time for its employment to be approved when D&L was retained.

"This case was filed on January 18, 2012 and the debtor received her discharge on May 7, 2012. The debtor requested the court to reopen the case so she can amend her schedules to disclose the claim against Bayer.

On August 7, 2013, the debtor filed Amended Schedules B and C, disclosing the litigation, with a value of $52,862.27, representing a gross settlement amount of $81,803.07 minus $26,431.14 in attorneys and $2,509.66 in 'case costs.' The debtor has claimed an exemption in the settlement proceeds in the amount of $47,764.49."

Docket 29.

D&L was retained by the debtor on May 10, 2012 but D&L did not find out about the bankruptcy case until late December 2012 or early January 2013, after the settlement offer that resulted in the settlement agreement was presented to the debtor on December 17, 2012.

The court is satisfied with the trustee's and D&L's explanation about why the estate failed to obtain prior court approval of D&L's employment.

D&L provided valuable services for the estate, as it litigated the personal injury claims, eventually leading to a settlement agreement with the defendant, generating $81,803 in settlement proceeds. After accounting for D&L's $23,159.02 in attorney's fees and $2,509.66 in costs and the debtor's $47,764.49 exemption claim, the estate will net at least approximately $8,369.90 from the settlement resulting from D&L's services.

The trustee has satisfied the nunc pro tunc approval standard under THC Financial. D&L's employment will be approved retroactively.

The requested compensation by D&L in this motion - of $23,159.02 in fees and $2,509.66 in costs - is based on a one-third contingency fee agreement, plus reimbursement of advanced costs. The compensation represents services provided from May 2012 until approximately February 2013.

D&L's services consisted, without limitation, of reviewing the debtor's medical records, retaining experts to further review her records, preparing and propounding discovery, preparing for and attending mediation meetings, and negotiating settlement with the defendant.

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.

34. 13-29754-A-7 TIMOTHY/SHAWN POLI — MOTION TO COMPEL ABANDONMENT 2-20-14 [28]
MET-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 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 seek an order compelling the trustee to abandon the estate's interest in their real property in Fairfield, California. The entire equity in the property is exempt.

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

value and benefit to the estate.

The debtors have scheduled the value of the property at $331,300. The property is encumbered by a single mortgage in favor of Nationstar Mortgage in the amount of $257,537. The debtors have exempted $73,763 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the scheduled value of and encumbrances against the property and the debtors' exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

35. 13-36161-A-7 JAY/LISA HUMISTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 3-3-14 [24]
PROVIDENT FUNDING ASSOCIATES, L.P. VS.

Final Ruling: The motion will be dismissed without prejudice because Debtor Lisa Humiston was not served at the correct address. This motion was served on her at 3209 Niagara Way in Fairfield, whereas her address is on Chipman Lane in Suisun City. Docket 31.

36. 10-48569-A-7 KEVIN/BONNIE LINCOLN — MOTION TO AVOID JUDICIAL LIEN
DED-2 — 2-19-14 [25]
VS. DONAHUE SCHRIBER REALTY GROUP, LP

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing and notice of errata on the notice of hearing are confusing in their instructions on whether and when written opposition should be filed to the motion. Both documents state, on one hand, that "Opposition, if any, shall be presented at the hearing on the motion." On the other hand, they also state that "Without good cause, no party will be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed." Dockets 26 & 30. This violates Local Bankruptcy Rule 9014-1(d)(3), which requires that the notice of hearing say whether and when written opposition must be filed.

Another reason the motion will be dismissed is that the respondent creditor has not been served with the motion papers. Only the respondent's state court counsel has been served with the motion. But, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). See also Fed. R. Bankr. P. 7004(b); Dockets 29 & 31.

37. 13-35093-A-7 PEASLEE DUMONT — MOTION TO COMPEL ABANDONMENT
JAS-2 — 2-19-14 [28]

Final Ruling: The motion will be dismissed without prejudice.

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

was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

38. 13-34696-A-7 JEFFREY JOHNSON — MOTION TO CONVERT CASE TO CHAPTER 13
JBJ-2 — 3-4-14 [75]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days' notice of the hearing on a motion to convert. The debtor has given only 20 days notice of the hearing. The motion papers were served on March 4, 2014, 20 days prior to the March 24 hearing on the motion. Docket 79.

39. 13-34896-A-7 FRANK STEPHENS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 2-14-14 [24]
BANK OF AMERICA, 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 in part and dismissed as moot in part.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Shingle Springs, California.

Given the entry of the debtor's discharge on March 4, 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 property has a value of $224,102 and it is encumbered by claims totaling approximately $275,875. 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 December 30, 2013.

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.

40. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO APPROVE COMPROMISE
HSM-6 — 2-24-14 [124]

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.

The trustee requests approval of a settlement agreement between the estate and Anna Muniz, a tenant at a real property in Folsom, California. The settlement resolves Ms. Muniz's tenancy claims against the debtors and her interests in rights to purchase the real property, as part of a pre-petition lease with an option to purchase agreement with the debtors. The trustee contends that Ms. Muniz's option to purchase has lapsed.

The trustee has received an offer for the purchase of the property.

Under the terms of the compromise, Ms. Muniz's outstanding rent for February and March 2014 will be excused and Ms. Muniz will receive a $5,000 payment from the proceeds generated by the sale of the property.

In exchange:

- Ms. Muniz will cooperate with the trustee in the sale of the property, including making the property available for viewings and inspections and vacating the property (on 45 days notice) in connection with a sale, unless Ms. Muniz reaches an agreement with the buyer to continue occupying the property;

- in the event of a sale, Ms. Muniz will deliver into escrow a stipulated judgment for her to vacate the property, in favor of the trustee, which judgment will be released provided escrow closes consistent with the terms of the settlement;

- Ms. Muniz will waive and release all her claims against the trustee and estate pertaining to the property, including her claim to the option to purchase;

- Ms. Muniz will not oppose sale of the property, but she may participate in the sale proceedings as an overbidder;

- starting April 1, 2014, Ms. Muniz will continue to pay rent for the property, under the terms of the pre-petition lease agreement, at $2,000 a month, and will continue to comply with all other terms of the lease agreement, including maintaining the property.

The terms of the settlement will be binding and valid for 150 days after entry of the order approving the settlement.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the impending sale of the property, given that the settlement will enable the trustee to timely consummate the sale, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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