UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 6, 2015 at 10:00 a.m.

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

5, 6, 7, 11, 13, 16,17, 18, 19, 20, 21

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 4, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 20, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 27, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 15-20305-A-7 LAURA ACEVEDO — MOTION TO AVOID JUDICIAL LIEN
TOG-1
VS. CAVALRY PORTFOLIO SERVICES, L.L.C. — 3-21-15 [16]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Cavalry Portfolio Services, L.L.C., for the sum of $10,246.29 on July 9, 2009. The debtor contends that an abstract of the judgment was recorded with Stanislaus County on April 21, 2009 and, as a result, the judgment became a judicial lien attached to the debtor's residential real property in Yuba City, California. The debtor is seeking avoidance of the lien.

The motion will be denied for several reasons.

First, although the motion refers to a recordation of the abstract of judgment, the abstract of judgment attached to the motion papers is unrecorded. Hence, the reference to a recordation in the motion is inadmissible hearsay. There is no evidence that the recordation of the abstract of judgment ever took place. Fed. R. Evid. 802.

Second, the motion states that the abstract of judgment was recorded in Stanislaus County (Docket 16 ¶ 1), yet the the debtor's property is in Sutter County. The abstract of judgment was not recorded in the County where the debtor's property was located. Again, then, there is no evidence of a judicial lien on the debtor's property.

Third, although the motion refers to a $100,000 exemption in the property, Schedule C (Docket 1) includes no exemption. The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." If the debtor has not exemption, she cannot claim an impairment of an exemption.

Fourth, the motion contains conflicting statements about the value of the property as of the petition date. In the motion (Docket 16 at 2), the debtor states that the value of the property was $120,815, whereas in her supporting declaration (Docket 18 at 2) the debtor states that the property "was worth $140,000.00." The discrepancy must be reconciled.

Finally, the motion refers to the value of the debtor's home, but Schedule A the debtor indicates that the debtor she owns only a one-third interest in the property. Docket 1. While this may not be important in the calculation of the exemption impairment, the court needs a clear statement from the debtor about whether the asserted value is of the real property in its entirety or of only the debtor's one-third interest in the property. The owners of the other two-thirds interest are not entitled to strip off the judicial lien.

2. 10-30917-A-7 BENNETT GALE — ORDER TO SHOW CAUSE
3-9-15 [32]

Tentative Ruling: The case will be dismissed.

The court issued this order to show cause because the debtor had filed an Amended Schedule F on February 23, 2015 but did not pay the $30 filing fee.

The debtor responds to this order, asserting that his amendment of Schedule F falls within an fee payment exception under 28 U.S.C. § 1930: "This fee must not be charged if the amendment is to add the name and address of an attorney for a creditor listed on the schedules." Docket 35.

However, the debtor did not just add the name and address of an attorney for a creditor listed on the schedules. In amending Schedule F (Docket 26), the debtor also added a new creditor, National Collegiate Student Loan Trust. That creditor was not in the debtor's prior versions of Schedule F. See Dockets 1 & 20.

More, in amending Schedule F, the debtor also changed the amounts of the two student loan claims previously listed in Schedule F. Those amounts increased from $41,886.18 to $53,326.29 (for the July 2, 2007 loan) and increased from $41,759.70 to $53,165.09 (for the July 10, 2007 loan). See Dockets 20 & 26.

Accordingly, the debtor's February 23, 2015 amendment of Schedule F does not fall within the fee payment exception cited by the debtor. And, the debtor's failure to pay the $30 fee when he filed Amended Schedule F is cause for dismissal. See 11 U.S.C. § 707(a)(2).

3. 13-33618-A-7 CAROLE BAIRD — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER
DNL-12 — 3-16-15 [175]

Tentative Ruling: The motion will be granted as provided in the ruling below.

The chapter 7 trustee requests authority to sell for $110,000 the estate's unencumbered interest in Quatros Buenos Amigos, a California partnership, to Henry and Robin McCarthy. The partnership's sole asset is a real property in Baja California Sur, Mexico, which property is actually held in trust for the partnership by a bank in Mexico. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

The trustee expects the estate to net one-third from the net sales proceeds, in addition to receiving the proceeds on account of the debtor's exemption claim in the property. The court entered an order assigning the debtor's interest in her exemption claim to the trustee, based on an earlier money judgment the court had entered in favor of the estate against the debtor.

The other two-thirds of the net sales proceeds will be disbursed to Erica Racz pursuant to a court-approved compromise with the trustee. Ms. Racz holds a competing interest in the partnership and thereby in the real property.

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. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission.

However, the broker's commission will be limited to 6% of the gross sales price of the partnership. That amount translates into $6,600 and not $9,000 as reflected in the motion. It is the gross price for the sale of the partnership and not the real property - which is not being sold and cannot be sold directly

by the estate - that should govern the calculation of the broker's commission. The trustee cannot sell the nonestate interest in the real property. However, if the owner of the other interest has agreed to the commission, it should be paid as per the agreement between that owner and the broker.

4. 15-21722-A-7 KELLY DUNN — MOTION FOR
PCJ-1 — RELIEF FROM AUTOMATIC STAY
TIFFANY FRANCO VS. — 3-19-15 [16]

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

The motion will be granted.

The movant, Tiffany Franco, seeks relief from the automatic stay as to real property in Vacaville, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in January 2015. The movant served a three-day notice to pay or quit on the debtor on January 21, 2015. After expiration of the three-day notice, the movant filed an unlawful detainer action on January 25, 2014. After the debtor answered the complaint, a trial was set for March 10, 2015. The debtor filed this bankruptcy case on March 4, 2015.

The movant seeks relief from stay to exercise rights under state law to obtain possession of the property, including continued prosecution of the unlawful detainer proceeding.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay rent. And, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on the debtor pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go back to state court in order for that court to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such and to the extent it is permitted by the state court. No other relief will be awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

5. 15-21722-A-7 KELLY DUNN — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 3-12-15 [9]
AMERICAN HONDA FINANCE CORP. VS.

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

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2010 Honda Civic. The movant has produced evidence that the vehicle has a value of $8,300 ($9,975 per Schedule B) and its secured claim is approximately $13,158. Docket 11 at 3.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on April 1, 2015.

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

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

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

6. 15-20826-A-7 LORRAINE LITTLE-DENNIS — MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
VVF-1 — 3-12-15 [14]

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

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

The motion will be granted.

The movant, American Honda Finance Corporation, seeks an order confirming that the automatic stay is not in effect with respect to a 2010 Honda Accord vehicle. The movant seeks the confirmation on the grounds that the debtor had two prior bankruptcy cases that were dismissed, pending within the one year prior to the filing of this case. This is the debtor's third bankruptcy filing since November 5, 2013.

On November 5, 2013, the debtor filed a chapter 13 case (case no. 13-34247). It was dismissed on October 21, 2014. On December 17, 2014, the debtor filed a chapter 7 case (case no. 14-32153). It was dismissed on January 5, 2015. The debtor filed the instant case on February 3, 2015.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases.

Accordingly, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on February 3, 2015. See 11 U.S.C. § 362(c)(4)(A)(ii).

7. 14-21727-A-7 GERALD/RUTH NORRIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
KRK-1 — 3-13-15 [28]
JPMORGAN CHASE BANK, N.A. VS.

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

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

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Redding, California.

Given the entry of the debtor's discharge on June 12, 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 $149,917 and it is encumbered by claims totaling approximately $205,467. The movant's deed is in first priority position and secures a claim of approximately $66,177.

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.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred.

If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

8. 14-24430-A-7 JOE CAMARA GARCIA — MOTION TO APPROVE COMPROMISE
HCS-4 — 3-6-15 [45]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and Jennifer Ellis, the debtor's former spouse, resolving the estate's $26,000 alimony claim against Ms. Ellis and resolving Ms. Ellis' $15,400 claim against the estate for reimbursement of payments she made on account of community debt.

The debtor and Ms. Ellis separated in September 2012. Ms. Ellis filed a chapter 7 bankruptcy case on November 1, 2013. The debtor filed a priority claim in her case on account of the alimony claim on February 13, 2014. The debtor filed this bankruptcy case on April 30, 2014. On January 4, 2015, Ms. Ellis' bankruptcy trustee issued a $4,100 check in the debtor's name on account of the debtor's alimony claim. This payment is property of the subject bankruptcy estate.

Under the terms of the compromise, Ms. Ellis has agreed to purchase the nondischargeable alimony claim held by this estate for $4,500, separate and apart from the $4,100 payment the trustee in this case has received from the administration of Ms. Ellis' bankruptcy estate. In addition, Ms. Ellis has agreed to voluntarily withdraw the $15,400 community debt claim she has asserted against this estate.

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).

While the court understands the essence of the compromise, the court is puzzled at how the debtor may assert the community debt claim against this estate when that claim was not disclosed in Schedule B in her chapter 7 bankruptcy case and, thus, the claim has not been abandoned by her estate yet. Case No. 13-34136, Docket 1. Although she received her discharge on February 18, 2014, Ms.

Ellis' bankruptcy case has not been closed yet. See also 11 U.S.C. § 554(c) & (d) (prescribing that "property scheduled . . . at the time of the closing of a case is abandoned to the debtor," while "property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate").

In other words, the trustee here appears to be settling the community debt claim with the wrong party. It appears that the party still holding that claim is Ms. Ellis' bankruptcy trustee.

Given this, even though the trustee may still wish to proceed with the compromise - given Ms. Ellis' lack of nonexempt assets, the court would like to hear from the trustee about whether the compromise is in the best interest of the estate and the creditors in the absence of settlement of the community debt claim.

9. 14-20431-A-7 JENNIFER MILLS — MOTION TO SELL
DNL-7 — 3-9-15 [66]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $5,000 the estate's interest in E & B Natural Resources Mgmt. Corp. (a.k.a. Perkins Ranch) to Andco Farms, Inc. The property, identified in Schedule B as a 1% interest in royalty income, has a scheduled value of $1,700. The trustee has determined that the entity represents an investment in gas and oil production. The total investment income generated by the entity during 2013 was $1,730.35.

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.

10. 15-21841-A-7 JUDY BOWEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-1 — 3-19-15 [12]
SHADOW LAKE MOBILEHOME PARK, L.L.C. VS.

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

The motion will be granted in part.

The movant, Shadow Lake Mobilehome Park, L.L.C., seeks relief from the automatic stay as to real property in Stockton, California, identified as a mobile home space in a mobile home park.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in August 2014. On October 15, 2014, the movant served the debtor with a three-day notice to pay or quit. After expiration of the notice period, the movant filed an unlawful detainer action on December 24, 2014. The state court set a trial date in the unlawful detainer action for March 10, 2015. The debtor filed this bankruptcy case on March 9, 2015.

The movant seeks relief from stay to continue the prosecution of the unlawful detainer action.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from August 2014 until the present. And, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on the debtor pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go back to state court in order for that court to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

The court will not permit the movant to conduct any lien sales, including a warehouseman's lien sale. The motion does not establish a colorable claim of the movant enforce such rights. The motion does not discuss how or why a warehouseman's lien is implicated here.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

11.	14-20142-A-7 SSA-2	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION TO EMPLOY SPECIAL COUNSEL 2-19-15 [34]

Tentative Ruling: The motion will be granted.

The trustee seeks retroactive approval to employ McCormack & Erlich, as special counsel for the estate, effective August 8, 2013, to prosecute pre-petition discrimination claims for the estate and Narvell Henry. The proposed compensation for M&E is a 40% contingency fee agreement. In addition, M&E will be entitled to reimbursement of all advanced costs in the litigation.

The debtors retained M&E to prosecute the discrimination claims in August 2013. They filed their bankruptcy case on January 7, 2014 but did not disclose the claims. After a no asset report was filed by the trustee and the case was closed on April 18, 2014, the trustee learned of the pending discrimination claims from M&E. M&E contacted the debtor's counsel immediately upon learning of the bankruptcy case. The trustee learned of the claims from the debtor's

counsel on July 2, 2014. On July 14, 2014, the trustee filed a motion to reopen the case. The case was reopened on July 14, 2014, the trustee concluded the meeting of creditors on July 22, 2014 and issued a notice of assets on the same date. The order approving the employment of Steven Altman as counsel for the estate was entered on September 17, 2014. Docket 33.

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 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.

As the debtors did not disclose their interest in the pending discrimination claims, the trustee did not learn of the claims until well-after M&E was retained as counsel to prosecute the claims. M&E has benefitted the estate already by analyzing and litigating the claims since August 2013. Also, the court perceives no prejudice to anyone by approving M&E's employment retroactively to August 8, 2013. The trustee is satisfied with M&E's prosecution of the claims.

The court concludes that the terms of employment and compensation are reasonable. M&E 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 of the special counsel will be approved, effective August 8, 2013. The motion will be granted.

12. 11-42346-A-7 ERNEST BEZLEY — MOTION TO COMPROMISE CONTROVERSY OR, ALTERNATIVELY TO CONTINUE TRIAL
HCS-5 — O.S.T.
3-30-15 [256]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a global settlement agreement among the estate, the debtor, the debtor's spouse, and Harold Jennings, an individual who made $1.1 million in allegedly usurious loans to the debtor. The settlement resolves a lawsuit including two sets of usury claims against Mr. Jennings, one by the trustee and the other by the debtor's spouse, Mrs. Bezley. It also resolves an objection to Mr. Jennings' proofs of claim, filed by the debtor's spouse.

From 1999 through 2008, Mr. Jennings made four loans to the debtor, with one additional advance to one of the loans. The usury claims are based primarily on the fees and other associated charges for the loans, aside from the 10% loan interest charged by Mr. Jennings. The trustee has identified several charges for the different loans, identified in various ways, and varying in amount as follows: $1,370, $2,465.75, $4,000, $6,000, $15,000.

Mr. Jennings received repayment on two loans when he foreclosed on a real property securing one of the loans and another real property was sold by the debtor repaying another loan.

After substantial discovery, the parties engaged in extensive settlement negotiations, including participating in a mediation that after some hurdles eventually led to a settlement executed by all parties.

Under the terms of the compromise, Mr. Jennings will pay $225,000 to the estate in full satisfaction of the pending claims against him, by both the trustee and Mrs. Bezley. The debtor has agreed not to assert an exemption claim in that settlement payment by Mr. Jennings. Also, the estate will convey to Mrs. Bezley the estate's 50% joint tenancy interest in nine unimproved parcels of real property in Clements, California. Mrs. Bezley is the other 50% joint tenant on those properties.

Further, under the compromise, Mr. Jennings will retain his two loans secured by two deeds of trust on the debtor's principal residence in Clements, California. But, the loan terms will be modified and the loans will be deemed to be current. More, Mr. Jennings will pay approximately $125,000 to cure tax defaults on the debtor's residence.

In addition, the trustee has agreed not to administer any assets scheduled prior to the settlement, leaving the estate only with the $225,000 settlement payment from Mr. Jennings.

Furthermore, Mr. Jennings will withdraw his proof of claim 7, one of three proofs of claim he has filed in this case. Mr. Jennings will not be allowed to file any other proofs of claim against the estate, nor will he be allowed to amend his other two proofs of claim. POC 7 is in the amount of $351,641.39 and it is secured by a real property known as Parcel 13. The other two proofs of claim filed by Mr. Jennings, POC 8 and POC 9, are for $412,938.14 and $296,512.22, respectively. POC 8 is secured by a first deed of trust on the debtor's principal residence and POC 9 is secured by a second deed of trust on the debtor's residence.

Finally, the trustee and Mrs. Bizley will dismiss their pending claims against Mr. Jennings.

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. Given the following considerations, the settlement is equitable and fair.

(1) The global nature of the settlement;

(2) The uncertain outcome of the litigation as Mr. Jennings denies receiving any loan fees while the debtor claims to have paid the loan fees in cash;

(3) That the $225,000 settlement payment by Mr. Jennings represents approximately 70% of the $321,931.57 in recoverable damages calculated by the trustee;

(4) The inherent costs, risks, delay and inconvenience of further litigation; and

(5) The speculative value of the estate's interest in the lots, as they were listed for sale for several years without success. Although the trustee received a $500,000 offer for the purchase of eight of the nine lots, this settlement offers the estate a better option for resolution of all litigation. After factoring the necessity for a partition action under 11 U.S.C. § 363(h) and considering that the litigation against Mr. Jennings would not be settled as easily due to Mrs. Bezley's virtually identical usury claims, the trustee has determined - and the court agrees - that the present settlement is a better outcome for the estate than the liquidation of the lots, as all litigation vis a vis the debtor, Mrs. Bezley and Mr. Jennings is resolved without more delay and uncertainty, in a one-step settlement.

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.

13. 15-20662-A-7 BRENT WILLIS — MOTION TO DISMISS DUPLICATE CASE 3-12-15 [12]
SJS-1

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 and the instant case will be dismissed.

The debtor requests dismissal of this case on the basis that he erroneously filed two cases. The other case is Case No. 15-20661. Given the erroneous filing of the two cases, this case (Case No. 15-20662) will be dismissed. No other relief will be granted.

14. 15-20364-A-7 CHRISTOPHER/MARIA CARTER — MOTION TO REDEEM
HDR-1 — 3-4-15 [12]

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks to redeem a 2007 Nissan Murano with approximately 189,000 miles in an unspecified condition. The vehicle is subject to a claim held by Patelco Credit Union for approximately $13,374. The debtor asserts in his supporting declaration that in his opinion the "as is" value of the vehicle is $2,634. Docket 14 at 2.

Patelco opposes the motion, pointing out that the redeemable value of the vehicle is replacement value as defined by 11 U.S.C. § 506(a)(2). Docket 23.

Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

The court agrees with Patelco. The vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

However, the value asserted by the debtor is not based on the price a retail merchant would charge for a vehicle of that kind, considering the age and condition of the vehicle. The debtor's valuation is based on his opinion of value, rather than what a retail merchant would charge. Also, the debtor states nothing definite about the condition of the vehicle. Thus, even if the court could use the debtor's opinion of value, his opinion has no foundation. The debtor has not carried his burden of persuasion in establishing the replacement value of the vehicle. Accordingly, the motion will be denied without prejudice.

15. 15-20364-A-7 CHRISTOPHER/MARIA CARTER — MOTION TO REDEEM
HDR-2 — 3-4-15 [16]

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks to redeem a 2003 VW Beetle with approximately 125,000 miles in an unspecified condition. The vehicle is subject to a claim held by Patelco Credit Union for approximately $6,609. The debtor asserts in his supporting declaration that in his opinion the "as is" value of the vehicle is $100. Docket 18 at 2.

Patelco opposes the motion, pointing out that the redeemable value of the vehicle is replacement value as defined by 11 U.S.C. § 506(a)(2). Docket 20.

Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

The court agrees with Patelco. The vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of

personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

However, the value asserted by the debtor is not based on the price a retail merchant would charge for a vehicle of that kind, considering the age and condition of the vehicle. The debtor's valuation is based on his opinion of value, rather than what a retail merchant would charge. Also, the debtor states nothing definite about the condition of the vehicle. Thus, even if the court could use the debtor's opinion of value, his opinion has no foundation. The debtor has not carried his burden of persuasion in establishing the replacement value of the vehicle. Accordingly, the motion will be denied without prejudice.

16. 12-33565-A-7 MARK KOLODZIEJ — MOTION TO AVOID JUDICIAL LIEN
TJW-10
VS. JPMORGAN CHASE BANK, N.A. — 3-23-15 [132]

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 Debtor Mark Kolodziej in favor of JPMorgan Chase Bank for the sum of $49,334.08. The abstract of judgment was recorded with Solano County on July 20, 2010. That lien attached to the debtor's residential real property in Vallejo, California (Legend Cir.). Docket 135, Ex. 1.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $200,000 as of the petition date. Dockets 134 & 1. The unavoidable liens totaled $387,799.03 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 134 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100.00 in Amended Schedule C. Dockets 134 & 99.

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).

17. 10-30167-A-7 RONNIE LOZANO
CLH-2
VS. CB MERCHANT SERVICES

MOTION TO
AVOID JUDICIAL LIEN
3-23-15 [44]

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 C B Merchant Services for the sum of $4,667.12 on May 16, 2007. The abstract of judgment was recorded with San Joaquin County on May 31, 2007. That lien attached to the debtor's residential real property in Stockton, California (Nantucket Drive). The motion requests that the lien be avoided only as to the Nantucket Drive property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $140,000 as of the petition date. Dockets 46 & 12. The unavoidable liens totaled $67,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 46 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $73,000 in Schedule C. Dockets 46 & 12.

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).

18. 10-30167-A-7 RONNIE LOZANO
CLH-3
VS. CITIBANK USA, N.A.

MOTION TO
AVOID JUDICIAL LIEN
3-23-15 [49]

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 Citibank for the sum of $3,643.46 on August 3, 2006. The abstract of judgment was recorded with San Joaquin County on September 1, 2006. That lien attached to the debtor's residential real property in Stockton, California (Nantucket Drive). The motion requests that the lien be avoided only as to the Nantucket Drive property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $140,000 as of the petition date. Dockets 51 & 12. The unavoidable liens totaled $67,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 51 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $73,000 in Schedule C. Dockets 51 & 12.

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).

19. 10-30167-A-7 RONNIE LOZANO
CLH-4
VS. MASONIC TEMPLE ASSOCIATION OF STOCKTON

MOTION TO AVOID JUDICIAL LIEN
3-23-15 [29]

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 Masonic Temple Association of Stockton, Inc. for the sum of $9,711.80 on April 26, 2006. The abstract of judgment was recorded with San Joaquin County on July 10, 2006. That lien attached to the debtor's residential real property in Stockton, California (Nantucket Drive). The motion requests that the lien be avoided only as to the Nantucket Drive property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $140,000 as of the petition date. Dockets 31 & 12. The unavoidable liens totaled $67,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 31 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $73,000 in Schedule C. Dockets 31 & 12.

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).

20. 10-30167-A-7 RONNIE LOZANO — MOTION TO AVOID JUDICIAL LIEN
CLH-5
VS. MAYALL, HURLEY, KNUTSEN, SMITH, AND GREEN
3-23-15 [34]

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 Mayall, Hurley, Knutsen, Smith and Green for the sum of $20,159.70 on September 25, 2009. The abstract of judgment was recorded with San Joaquin County on October 13, 2009. That lien attached to the debtor's residential real property in Stockton, California (Nantucket Drive). The motion requests that the lien be avoided only as to the Nantucket Drive property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $140,000 as of the petition date. Dockets 36 & 12. The unavoidable liens totaled $67,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 36 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $73,000 in Schedule C. Dockets 36 & 12.

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).

21. 10-30167-A-7 RONNIE LOZANO — MOTION TO AVOID JUDICIAL LIEN
CLH-6
VS. PROFESSIONAL COLLECTION CONSULTANTS
3-23-15 [39]

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 Professional Collection Consultants for the sum of $1,225.53 on February 16, 2005. The abstract of judgment was recorded with San Joaquin County on March 17, 2005. That lien attached to the debtor's residential real property in Stockton, California (Nantucket Drive). The motion requests that the lien be avoided only as to the Nantucket Drive property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $140,000 as of the petition date. Dockets 41 & 12. The unavoidable liens totaled $67,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 41 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $73,000 in Schedule C. Dockets 41 & 12.

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).

22. 12-29776-A-7 DEUCES WILD, INC.
DNL-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
3-2-15 [129]

Tentative Ruling: The motion will be denied without prejudice.

Desmond, Nolan, Livaich & Cunningham, special counsel for the trustee, has filed a motion for approval of compensation.

While this appears to be a second interim and final motion for compensation, which is how the motion is titled, the body of the motion seeks approval of compensation as a first interim motion. See Docket 129 at 9 & 11. This is confusing as the court cannot tell what part of the motion refers to what interim compensation for which period.

It would be helpful for the motion to clearly distinguish between the first and second interim periods in all aspects of compensation (fees, expenses, service periods, etc.).

For instance, on page one (Docket 129 at 1) the motion asks for $38,691.25 in fees and $483.14 in expenses, for a total of $39,174.39. This compensation seems to be limited to the movant's second interim period of services, given that the movant's first interim compensation totaled $36,191.46 (Docket 118 at 1) and the instant motion aggregates the movant's entire compensation on page nine, at $74,506.50 (Docket 129 at 9).

However, as one continues reading page one (Docket 129 at 1), the movant matches the sought interim compensation to the entire period of the movant's services (from May 21, 2012 through February 3, 2015). This makes no sense because the movant's second interim compensation does not cover the entire

period of services (both first interim and second interim periods). The reference to interim compensation should match to a corresponding reference of the interim service period for which that compensation is sought.

Given the above confusion, the court will deny the motion without prejudice.

23. 13-35308-A-7 DOROTHY PARENT — ORDER TO SHOW CAUSE 2-25-15 [223]

Tentative Ruling: None. Appearances required.

24. 13-35308-A-7 DOROTHY PARENT — MOTION FOR SANCTIONS, ATTORNEY'S FEES AND COSTS AND FOR EQUITABLE SUBORDINATION 1-9-15 [119]
BJ-2

Tentative Ruling: None. Appearances required.

25. 13-35308-A-7 DOROTHY PARENT — MOTION TO ABANDON 3-6-15 [228]
HCS-7

Tentative Ruling: The motion will be granted.

The trustee wishes to abandon the estate's interest in a pending state court action against the debtor, including related cross and intervention claims.

The action pertains to the debtor's sale of a real property to Enterprise Rancheria Estom Yumeka. Rancheria filed a lawsuit against the debtor in 2005, seeking specific performance of the sale. That lawsuit was eventually settled, leading to consummation of the sale.

In 2008, Robert Swendeman filed an action against the debtor, seeking the recovery of a real estate commission for services performed as a real estate agent for Rancheria. Mr. Swendeman obtained a judgment against the debtor. An abstract of the judgment was recorded with Tehama County, encumbering a real property in which the estate holds a 50% interest.

In 2011, the debtor's brother in law, Kevin Butler, filed another lawsuit against the debtor, seeking the recovery of a real estate commission from the sale of the property to Rancheria for services performed as a real estate agent for the debtor. Although the debtor filed cross-claims against Mr. Butler and Rancheria, the claims against Mr. Butler have been dismissed. The cross-claims against Rancheria are for breach of contract, seeking declaratory relief. Those claims are still pending.

In November 2013, Mr. Swendeman sought intervention in the pending state court action, seeking the satisfaction of his previous judgment entered against the debtor.

Creditors Robert Swendeman (d.b.a. T'n'T Real Estate), Kevin Butler, and Anita A. Butler on behalf of Dooda Limited Partnership, in her capacity as general partner of that partnership, oppose the motion, seeking the court to compel the trustee to produce the debtor's litigation file to the respondents.

In the alternative, the respondents are asking the court to force the trustee to sell the estate's interest in the pending litigation, along with the estate's interest in legal malpractice claims against the debtor's counsel (Michael Brady, Michael Vinding, and the Brady & Vinding Partnership), who represented her in the sale of the property to Rancheria, to the respondents for $100.

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 been unable to locate anyone to act as special counsel to prosecute the pending litigation on behalf of the estate. The trustee has been unable to settle the case. And, after speaking with counsel for all parties involved in the litigation, including Laurence Blunt, counsel for the respondents, the trustee has determined that continued litigation would be expensive and risky, as the issues to be adjudicated are complex. In addition, if the estate were to lose against Rancheria, the estate may be liable for Rancheria's attorney's fees in the litigation.

The trustee also attempted to sell the estate's interest in the litigation, but without success. The respondents offered only $100 to purchase the litigation from the estate. The trustee rejected their offer and also rejected the offer of Mr. Blunt to be employed as special counsel for the estate, to represent the estate in the litigation along with his representation of Mr. Butler and Mr. Swendeman.

The court will deny the respondents' request for discovery.

Also, Mr. Blunt's clients, the respondents, have adverse interests to the estate both in this case and the pending state court litigation. The respondents are creditors in this case and, while Mr. Butler and Mr. Swendeman may be seeking to recover their commissions from Rancheria, their commissions are based on claims against the debtor.

Given the adverse interests held by Mr. Blunt's clients, the court will not allow or compel the estate to produce its file as pertaining to the pending litigation, much less allow the employment of Mr. Blunt as special counsel for the estate.

Another reason for denying Mr. Blunt's offer to be employed as special counsel for the estate is that his offer asks that he be paid hourly, making the estate bear all risk of loss in the litigation. The trustee has assessed the estate's risk of loss in the litigation and believes it to be sufficiently high not to warrant the employment of special counsel on an hourly fee basis, without regard to outcome of the litigation. As such, the court agrees with the trustee.

Lastly, the court will not order the estate to sell the litigation to Mr. Blunt's clients for $100. This makes no sense. Obtaining court approval for such a sale would cost the estate several thousand dollars. Selling at that price would be burdensome to the estate, which is basis for abandoning the litigation.

The totality of the foregoing circumstances demonstrates that the estate has exhausted all options in attempting to realize a return on its interest in the pending litigation. Consequently, the estate's interest in the litigation is

of inconsequential value to the estate. Accordingly, the motion will be granted.

As a final note, the court will not order a sale of the estate's interest in the debtor's malpractice claims against Michael Brady, Michael Vinding, and the Brady & Vinding Partnership. Those claims are not being abandoned.

FINAL RULINGS BEGIN HERE

26. 12-30607-A-7 SONJA WALL
PPR-1
WILMINGTON TRUST, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-5-15 [44]

Final Ruling: The motion will be dismissed without prejudice because counsel for the trustee has not been served with the motion. See Docket 50.

27. 14-32408-A-7 LINDA ANDERSON
JLB-1
VS. CAPITAL ONE BANK (USA), N.A.

MOTION TO
AVOID JUDICIAL LIEN
2-12-15 [14]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the creditor. Docket 18. It was not addressed to anyone. And, the notice was not served by certified mail. Docket 18. This does not satisfy Rule 7004(h).

In addition, the notice of hearing for the motion does not indicate when written opposition must be filed, in violation of Local Bankruptcy Rule 9014-1(d)(3). Docket 15. The notice of hearing appears to be missing at least one page. Id.

28. 13-30013-A-7 JON/FAITH PARMER
JWR-1

MOTION TO
APPROVE COMPENSATION OF TRUSTEE
2-11-15 [95]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The chapter 7 trustee, John Reger, has filed his first and final motion for approval of compensation. The requested compensation consists of $13,310.98 in fees and $163.03 in expenses, for a total of $13,474.01. The services for the sought compensation were provided from August 2, 2013 through February 11, 2015. The sought compensation is based on a $201,219.54 distribution to creditors.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant has made or is about to make $201,219.54 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $13,310.98 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $7,560.97 (5% of the next $950,000 (or $151,219.54)). Hence, the requested trustee fees of $13,310.98 do not exceed the cap of section 326(a).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services included, without limitation: (1) reviewing the case file, (2) evaluating assets of the estate, (3) selling a promissory note, (4) collecting rents, (5) recovering a preferential transfer, (6) securing the installation of an access ladder at a commercial real property generating net rental income for the estate, (7) communicating with the estate's counsel and accountant about legal and tax issues, (8) preparing pleadings, and (9) preparing employment and compensation motions.

The trustee's services, as described above, do not present extraordinary circumstances pertaining to the administration of the estate.

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

29. 13-29214-A-7 JAMES/NICHOLE PINTO — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
FIRST HORIZON HOME LOANS VS. — 3-6-15 [28]

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, First Horizon Home Loans, seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on October 28, 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 debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $299,000 and it is encumbered by claims totaling approximately $425,394. 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.

30. 15-20818-A-7 LASHONDA HOWARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA INC. VS. — 2-24-15 [11]

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 dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2008 Chrysler Sebring 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 February 3, 2015 and a meeting of creditors was first convened on March 4, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 4.

While the debtor filed a statement of intention on the petition date, she did not list the vehicle in the statement. Docket 1.

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, she did not include 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 March 4, 2015, the initial creditors' meeting 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 March 4, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on March 4, 2015.

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.

31. 14-30420-A-7 SHER/ZAKIA BACHA — MOTION TO AVOID JUDICIAL LIEN
MOT-1
VS. UNIFUND CCR L.L.C. — 3-2-15 [26]

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 Sher Bacha in favor of Unifund CCR, L.L.C., for the sum of $24,355.07 on October 24, 2013. The abstract of judgment was recorded with San Joaquin County on December 27, 2013. That lien attached to the debtor's residential real property in Lodi, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $286,000 as of the petition date. Dockets 28 & 1. The unavoidable liens totaled $211,250 on that same date, consisting of a single mortgage in favor of Green Tree. Dockets 28 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of $100,000 in Amended Schedule C. Dockets 28 & 17.

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. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
JB-2 — 3-4-15 [151]

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 $3,967.50 in fees and $233.16 in expenses, for a total of $4,200.66. This motion covers the period from January 29, 2014 through March 4, 2015. The court approved the movant's employment as the estate's accountant on March 13, 2014. In performing its services, the movant charged an hourly rate of $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 reviewing financial records, performing tax analysis, and preparing 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.

33. 15-20833-A-7 DONG TRUONG — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 2-26-15 [14]

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

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2007 Chevrolet Trailblazer. The movant has produced evidence that the vehicle has a value of $4,250 and its secured claim is approximately $6,683. Docket 16 at 3.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay as to the debtor.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

34. 14-31837-A-7 PAUL/EMILY LANGELL — MOTION TO AVOID JUDICIAL LIEN
CLR-1
VS. DISCOVER BANK — 2-11-15 [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 Emily Langell in favor of Discover Bank for the sum of $17,270.16 on December 17, 2013. The abstract of judgment was recorded with Butte County on April 1, 2014. That lien attached to the debtor's residential real property in Oroville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $229,463 as of the petition date. Dockets 26 & 1. The unavoidable liens totaled $220,953 on that same date, consisting of a first mortgage in favor of Green Tree for $176,118 and a second mortgage in favor of Bank of America for $44,835. Dockets 26 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $8,510 in Schedule C. Docket 1.

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).

35. 14-32238-A-7 JUAN GOMEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
KBK-1 — 3-13-15 [21]
AMY SCHMICH VS.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The movant, Amy Schmich, seeks relief from the automatic stay to proceed in state court with her negligence and other personal injury claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent her claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay.

Moreover, the trustee has filed a non-opposition to this motion and the debtor has entered into a stipulation with the movant for the identical stay relief sought by this motion. Docket 27. This is further cause for the granting of relief from stay.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

The court will award retroactive relief from stay to the movant as well. The movant initiated the pending state court action against the debtor and others

on March 17, 2014. This bankruptcy case was filed on December 19, 2014.

But, the movant did not find out about this case and the automatic stay until March 2, 2015. And, between December 19, 2014 and March 2, 2015, the parties continued litigation of the state court action, including the filing and prosecution by the movant of a motion for leave to amend the complaint.

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. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

As the movant did not find out about this case until March 2, 2015, even though the case had been filed on December 19, 2014 and the debtor did not apprise the movant of the filing, the court will grant relief from stay to the movant retroactive to December 19, 2014, the petition filing date.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

Finally, this ruling does not amount to approval of the stay relief stipulation between the movant and the debtor. Docket 27. The approval of such stipulation requires a separate motion and notice pursuant to Fed. R. Bankr. P. 4001(d).

36. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN
SLE-1
VS. CAPITAL ONE BANK — 3-23-15 [44]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the creditor. Docket 47. It was not addressed to anyone. And, the notice was not served by certified mail. Docket 47. This does not satisfy Rule 7004(h).

37. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN
SLE-2
VS. VION HOLDINGS, L.L.C. — 3-23-15 [48]

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

of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Vion Holdings, LLC without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 51. This violates Rule 7004(b)(3).

38. 15-21256-A-7 GARRETT/KIMBERLY RASH — MOTION TO COMPEL ABANDONMENT
NF-1 — 2-26-15 [11]

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). See Dockets 3 & 15.

39. 12-33467-A-7 RONALD DUNCAN — OBJECTION TO CLAIM
DNL-15 — 2-26-15 [308]
VS. LB CONSTRUCTION, INC.

Final Ruling: The objection will be dismissed without prejudice because the objection was not served at the address on the proof of claim to which the chapter 7 trustee is objecting: "Radoslovich | Krogh, PC 701 University Avenue, Suite 100 Sacramento, CA 95825." See Proof of Claim 25-1 at 1.

40. 14-32168-A-7 BRUCE/MARY HEIM — MOTION TO AVOID JUDICIAL LIEN
MRT-2 — 2-27-15 [23]
VS. EDNA HOM

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 Bruce Heim in favor of Edna Hom for the sum of $9,743.97 on August 20, 2012. The abstract of judgment was recorded with San Joaquin County on September 12, 2012. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $159,578 as of the petition date. Dockets 23 & 19. The unavoidable liens totaled $168,500 on that same date, consisting of a single mortgage in favor of Green Tree. Dockets 23 & 19. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in

the amount of $1.00 in Schedule C. Dockets 23 & 19.

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).

41. 14-32070-A-7 CAPITOL AIR SYSTEMS, INC. — MOTION FOR ADMINISTRATIVE EXPENSES
ASL-1 — 3-23-15 [114]

Final Ruling: The motion will be denied without prejudice because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

42. 14-31696-A-7 JEANNINE ZOROVICH — MOTION TO AVOID JUDICIAL LIEN
ADR-1
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 2-26-15 [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 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 Portfolio Recovery Associates, LLC for the sum of $8,637.84 on June 9, 2014. The abstract of judgment was recorded with Colusa County on June 30, 2014. That lien attached to the debtor's residential real property in Arbuckle, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $225,000 as of the petition date. Dockets 16 & 1. The unavoidable liens totaled $249,583 on that same date, consisting of a single mortgage in favor of James B. Nutter & Co. Dockets 16 & 17, Ex. B & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $4,596.84 in Schedule C. Dockets 14 & 1.

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).