UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 11, 2016 at 10:00 a.m.

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

5, 6, 8

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 9, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 25 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 2, 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. 14-29813-A-7 LISA AHRENS — AMENDED OBJECTION TO CLAIM
DNL-2
VS. GOLDEN ONE CREDIT UNION — 10-23-15 [26]

Tentative Ruling: The objection will be sustained.

The hearing on this motion was continued from February 29, 2016, in order for the parties to file supplemental papers. The parties have filed supplemental pleadings. An amended ruling from February 29 follows.

The trustee objects to the unsecured portion of The Golden 1 Credit Union's $17,282.29 proof of claim, POC 1. The proof of claim contains secured and unsecured portions. The secured portion, $13,907, is secured by a 2013 Mazda 6 vehicle. The unsecured portion of the claim, a deficiency of $3,375.29, is based on the vehicle's $13,907 value as of the petition date, as listed by the debtor in her Schedule B. Docket 1; Docket 9, Amended Schedule B.

Golden 1 has no deficiency claim against the estate as it has elected not to declare a default under the loan agreement with the debtor, not to repossess the subject vehicle, and it has continued to accept payments from the debtor on account of its claim. Although the filing of this bankruptcy case may be a default by the debtor under the loan agreement, Golden 1 has chosen not to enforce this loan term. Docket 33 at 8 (Golden 1 stating that "[a]lthough [it] is free to exercise its state-law remedies with respect to the [v]ehicle, including repossession and sale, it has thus far elected not to do so").

The vehicle is no longer property of the bankruptcy estate because the time for the debtor to redeem, reaffirm, or surrender has expired. See 11 U.S.C. §§ 362(h), 521(a)(2)(A). Hence, even the automatic stay is not an impediment to its resort to its collateral. See 11 U.S.C. § 362(c)(1), (h). Despite this, Golden 1 has elected to not resort to its collateral and instead accept voluntary payments from the debtor. See 11 U.S.C. § 524(f).

When this case was filed on September 30, 2014, the payments on Golden 1's loan were current, not in default, and Golden 1 had not declared a default. Golden 1 in fact has no deficiency claim because the court has neither bifurcated its claim nor has Golden 1 repossessed or sold its collateral at foreclosure for less than is owed by the debtor. See 11 U.S.C. § 506(a).

Nothing has changed since the petition was filed. Loan payments have continued unabated and Golden 1 has continued to accept them from the debtor. At the February 29 hearing on this motion, Golden 1 admitted that payments were current.

When the loan payments are current and the secured creditor is accepting such payments as if there is no default, regardless of whether there is a basis for declaring default, the creditor cannot also assert an unsecured claim against the estate, based on a hypothetical deficiency.

The debtor's failure to reaffirm the debt as promised in her statement of intention is not basis for an unsecured claim against the bankruptcy estate. The debtor's failure to reaffirm has one consequence to the estate – the vehicle is no longer property of the estate. See 11 U.S.C. § 362(h)(1). It does not alter the terms of the pre-petition loan agreement, which Golden 1 has continued to honor. Golden 1 cannot share in the distribution to unsecured

creditors, while it continues to accept the loan payments under the agreement and continues to treat the agreement as enforceable and executory. Golden 1 has elected to not declare a default of the loan agreement.

In short, Golden 1 has allowed the debtor to retain the vehicle while continuing to voluntarily repay the loan. While BAPCPA ended a debtor's ability to compel a creditor to accept this "ride through" option, nothing prevents a debtor and a creditor from agreeing to such. Golden 1 has chosen to continue doing business with the debtor despite this bankruptcy case and its repercussions for their debtor-creditor relationship. It has chosen to continue accepting payments from the debtor and has not elected to exercise its rights against the vehicle.

The court rejects Golden 1's complaint that the debtor has not reaffirmed the loan. Golden 1 has continued to accept the voluntary payments tendered by the debtor. The debtor cannot be forced to waive her chapter 7 discharge, *i.e.*, reaffirm the debt. While section 704(a)(3) states that trustees "shall ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B)," there is nothing the trustee here could do to force the debtor to waive her discharge by reaffirming Golden 1's debt.

Golden 1's assertion of an unsecured deficiency makes no sense in light of its continued acceptance of post-petition payments from the debtor pursuant to the terms of the pre-petition loan agreement. Assuming Golden 1 had a valid pre-petition unsecured claim against the estate as of the petition date, its acceptance of post-petition payments from the debtor is inconsistent with the viability of that claim. Golden 1 has not indicated that those payments have been applied only to the bifurcated secured portion of its claim. They are being applied to the entire loan balance. Golden 1 is treating its claim as a single, unified secured claim for which it was and is receiving contract installment payments from the debtor.

Further, neither the debtor, the trustee, nor Golden 1 could strip down the claim by resort to 11 U.S.C. § 506(a) as this is a chapter 7 proceeding. See Dewsnup v. Timm, 502 U.S. 410 (1992) (recently reaffirmed by Bank of America, N.A. v. Caulkett, 135 S. Ct. 1995, 1998-1999 (2015)).

There can be no stripping, bifurcating, or recharacterizing of Golden 1's secured claim as the application of 11 U.S.C. § 506(a) is limited to "[a]n allowed claim of a creditor secured by a lien on property in which *the estate has an interest*." The subject vehicle is not property of the estate any longer. See also Rabobank v. Beardsley (In re Beardsley), Case No. NC-14-1230-DkiTa, 2015 WL 5121080, at *5-6 (B.A.P. 9th Cir. 2015) (unpublished).

On the September 30, 2014 petition date, the debtor promised to reaffirm Golden 1's loan. Docket 1 at 31. 11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

The initial meeting of creditors was on November 5, 2014. Thus, the debtor had until December 5, 2014 to reaffirm the debt owed to Golden 1. But, as the debtor did not do this, the automatic stay automatically terminated on December 6, 2014 and the vehicle was no longer property of the bankruptcy estate as of that date. See 11 U.S.C. § 362(h).

Also, if Golden 1 could strip down the claim to the value of the vehicle, asserting the deficiency as an unsecured claim against the estate, the debtor

could strip down the claim to the value of the vehicle as well, redeeming the vehicle and directing Golden 1 to collect the unsecured deficiency from the estate. This is forbidden by Dewsnup.

In any event, either way, the creditor or the debtor would be receiving a windfall at the expense of the bankruptcy estate and the unsecured creditors. The debtor would be keeping the vehicle and having the estate pay Golden 1 a significant portion of the purchase money loan.

The court also notes that Golden 1's bifurcation of its secured claim was done without court approval. See Fed. R. Bankr. P. 3012 (requiring court approval for the valuation of security).

As an alternative resolution of the objection, because Golden 1 has agreed to accept voluntary payments from the debtor, because the value of the vehicle is at least $13,907, because Golden 1 has not proceeded against its collateral, because the debtor has made all installment payments due under the purchase money loan, both before and after the bankruptcy, the court finds that the debtor is likely to pay Golden 1 in full without resort to its collateral. The court concludes that any deficiency claim is at best a contingent and/or unliquidated claim. The trustee is attempting to make a distribution to creditors and waiting for Golden 1 to seize and sell its collateral will unduly delay the administration of the case. Therefore, pursuant to 11 U.S.C. § 502(c)(1), the court estimates Golden 1's unsecured claim at $0.00.

The debtor's failure to reaffirm the debt owed under the loan agreement does not make the agreement without effect. If it did, Golden 1 would have no basis to assert any claim against the bankruptcy estate, whether secured or unsecured claim. It is the agreement that gives rise to Golden 1's claim. When Golden 1 asserts its claim against the bankruptcy estate, it is doing so based on the agreement. Thus, to argue that the trustee has no rights under the agreement is inconceivable. If Golden 1 can assert a claim against the bankruptcy estate, even though the debtor - and not the estate - is a party to the agreement, the trustee may assert the debtor's defenses and rights under the agreement. Any defenses or rights the debtor had on the petition date under the agreement are available to the trustee. See 11 U.S.C. § 541(a)(1) (prescribing that a bankruptcy estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case"). This includes any of the debtor's rights to attorney's fees under the agreement, as established by Cal. Civ. Code § 1717.

The failure of the debtor to reaffirm Golden 1's debt does not have the effect of making "the Sale Contract . . . no longer property of the estate." Docket 33 at 9. 11 U.S.C. § 362(h) says nothing about the loan agreement giving rise to the secured creditor's claim. That provision references only the "personal property of the estate or of the debtor securing in whole or in part a claim." It is only the collateral securing the secured creditor's claim - *i.e.*, the vehicle - that is "no longer . . . property of the estate." 11 U.S.C. § 362(h)(1).

The court finds it unnecessary to address other grounds for disallowance of Golden 1's unsecured portion of the claim.

Furthermore, as the trustee is the prevailing party and the agreement based upon which Golden 1's claim is asserted against the estate contains an attorney's fee provision, the court will award the trustee's fees and costs in prosecuting this objection. Docket 30 at 8.

It is disingenuous to argue that the trustee is breaching his fiduciary duty to unsecured creditors by spending over $8,600 objecting to Golden 1's $3,375.29 unsecured claim even though the estate has approximately $4,000 for distribution (Golden 1 would receive approximately $300 on account of its unsecured claim). It is Golden 1 who will be paying the trustee's fees and costs in connection with this objection.

Under the loan agreement, which contains a provision for attorney's fees and costs in favor of Golden 1, and under Cal. Civ. Code § 1717(a), which prescribes reciprocity for the recovery of attorney's fees and costs to the prevailing party, the trustee is entitled to reasonable attorney's fees and costs as the prevailing party here. Docket 30 at 8.

Given the attorney's fee provision in the loan agreement, given Cal. Civ. Pro. Code § 1717(a) and given the disallowance of Golden 1's unsecured claim, the trustee is not breaching his fiduciary duty to the unsecured creditors in prosecuting this objection. On the contrary, he is fulfilling his fiduciary duty.

On February 29, the court continued the hearing on this motion in order for the trustee to amend his claim for attorney's fees and costs and for Golden 1 to challenge the reasonableness and/or necessity of all such fees and costs. The court closed the record on this motion as to all other issues. Docket 63.

The trustee has amended his request for attorney's fees and costs, seeking $12,236.50 in attorney's fees and $343.10 in costs (through March 3, 2016), plus $2,025 in attorney's fees for preparing the trustee's supplemental papers to Golden 1's opposition (through March 21, 2016), for a total of $14,604.60. Dockets 67 & 81.

The trustee's compensation request can be split into three service periods.

(1) The first period runs from August 15, 2015 through December 21, 2015, representing attorney's fees in the amount of $8,640 and costs in the amount of $338.67; and

(2) The second period runs from December 22, 2015 through March 3, 2016, representing attorney's fees in the amount of $3,596.50 and costs in the amount of $4.43 (additional photocopy and postage).

(3) The third period runs from March 4, 2016 through March 21, 2016, representing attorney's fees in the amount of $2,025.

In response to the above-request for attorney's fees and costs, Golden 1 asserts that there should be no reciprocity granted to the trustee because the court concluded that Golden 1 has no claim against the estate. Golden 1 states that: "In other words, the Court concluded that Golden 1 cannot enforce its rights under the sale contract against the estate because it accepted post-petition payments from the debtor." Docket 72 at 2.

Golden 1 also challenges the reasonableness of the trustee's attorney's fees, seeking at the least a reduction of the fees.

First, the reciprocity challenge is untimely. Golden 1 has waived it by not raising it in its original opposition to the objection. In its February 29 ruling on the objection, the court unequivocally prescribed that:

"[T]he court will reopen the record for the trustee to amend his request for attorney's fees and costs and for Golden 1 to challenge the reasonableness and/or necessity of all such fees and costs. The record on this motion is closed as to all other issues."

Docket 63 at 3.

Golden 1's reciprocity argument is not a challenge to "the reasonableness and/or necessity of" the attorney's fees and costs. It is a challenge to the underlying allowance of the fees and costs under the contract, aside from whether the fees and costs are reasonable and necessary.

Second, even if the court were to address the reciprocity argument, Golden 1 has missed the point. Golden 1 mischaracterizes the court's ruling. If the court has ruled "that Golden 1 cannot enforce its rights under the sale contract against the estate," Golden 1 cannot assert even its secured claim against the estate, clearing the way for the estate to sell the debtor's vehicle free and clear of Golden 1's secured claim. Docket 72 at 2. Obviously, Golden 1 still holds its secured claim against the estate, and that claim is based on Golden 1's rights under the contract.

Once again, this court is not holding that Golden 1 has no claim against the estate. As spelled out above, "Golden 1 has no deficiency claim [(*i.e.*, unsecured claim)] against the estate." See also Docket 63.

Golden 1 continues to rely on the contract with the debtor to assert a secured claim against the estate. This is an adequate basis for applying the reciprocity rule of Cal. Civ. Code § 1717(a).

Third, Golden 1's contention of the unreasonableness of the trustee's attorney's fees is unhelpful in identifying which fees the court should disallow. Golden 1 fails to identify with specificity time entries that should be disallowed.

For instance, while Golden 1 argues that it had no "meaningful opportunity" to resolve the objection consensually, Golden 1 fails to identify the services for which the trustee should not have sought compensation.

Fourth, Golden 1 had "meaningful opportunity" to resolve the objection consensually. Golden 1 complains because the principal negotiations between the two sides started on August 26, 2015, whereas the trustee filed an objection to Golden 1's proof of claim on August 28 (actually the objection was filed on August 27), only two days later. Docket 20.

But, Golden 1 fails to acknowledge that the objection was filed without a notice of hearing, meaning that there was no scheduled or impending hearing to respond to the objection. Docket 36, Ex. A at 1; Docket 20. By filing the objection on August 27, the trustee did nothing to hamper Golden 1's "meaningful opportunity" to resolve the objection.

The trustee never set a hearing on the objection filed August 27. Instead, on October 23 an amended objection was set for hearing or December 7, 2015. Dockets 26 & 27. This gave Golden 1 plenty of time to resolve the objection.

At the end, Golden 1 was frustrated with the trustee because he did not provide a "cogent legal theory or evidence." "The Trustee's conduct in failing to present any cogent legal theory or evidence in support of the demand to Golden

1 to withdraw its unsecured claim weighs in favor of reducing the fees requested." Docket 72 at 5. In other words, the trustee's arguments were not to Golden 1's liking.

Golden 1 "files bifurcated [proofs of] claim[] all the time and that when 'new' trustees call, the legal department talks to them to set them straight." Docket 81 at 4; Docket 29 at 3. Golden 1's standard practice of filing such proofs of claim explains its inability to settle this matter. Even with a "meaningful opportunity," the court is unconvinced any settlement was likely.

Fifth, Golden 1 challenges the trustee's "1.2 hours researching the state law standard for enforcing a security interest . . . and 2 hours researching the 'duty of creditor to timely proffer reaffirmation agreement and related disclosure statement.'" Docket 72 at 5. But, Golden 1 fails to identify these time entries in the record and the court has been unable to locate them either.

Moreover, the research conducted by the trustee was relevant to the objection. Researching issues pertaining to the enforcement of a security interest can reveal requirements for the assertion of deficiency claims, which is at the heart of this objection, *i.e.*, whether Golden 1 may assert a deficiency unsecured claim when it has elected not to enforce its security interest and accept voluntary payments from a debtor.

Researching duties of creditors with respect to reaffirmation agreements relates to one of Golden 1's arguments in opposition to this objection, namely, that the trustee had a duty to enforce the debtor's statement of intention to reaffirm the debt with Golden 1. Yet, his failure to do so resulted in the removal of the vehicle from the estate, clearing the way for Golden 1 to enforce its security interest in the vehicle. Docket 33 at 3, 7-8. Despite her statement of intention, the debtor did not seek a reaffirmation agreement with Golden 1 in this case.

The court also rejects the notion that the trustee was required to share his legal research with Golden 1.

Sixth, the court will sustain the objection to the attorney's fees reflecting work unrelated to the objection, including 0.8 hours for review of Golden 1's opposition to the employment motion for the trustee's counsel and 0.4 hours for preparing task billing. Once again, however, the court has been unable to find these time entries in the record. Golden 1 has not cited to where they are in the record.

Seventh, the court rejects the contention that the trustee should not have used predominantly partner-level work in connection with this objection. This is a litigation decision that is consistent with some of the novel issues raised by this objection, the vehement opposition by Golden 1 and the widespread effect of the objection given Golden 1's regular widespread practice of filing such claims.

Eight, the fact that the estate would not have had the resources to satisfy Golden 1's attorney's fees in the event Golden 1 had prevailed on the objection, is not basis for disallowing attorney's fees for the estate. Golden 1 cites no persuasive, much less binding authority on this point. The court is unwilling to allow the insolvency of one of the parties here to restrict the award of attorney's fees in its favor. Such a practice would discourage anyone from challenging unlawful behavior by parties with significant resources, such as Golden 1.

Finally, the court is satisfied that the attorney's fees and expenses requested by the trustee are reasonable and necessary. The trustee has had to litigate this objection extensively. The novel issues presented by the objection, the expansive research required, the vehement opposition by Golden 1, the extensive communications among the parties, the numerous pleadings filed by the trustee, and the protracted nature of the proceedings (lasting nearly 10 months), warrant the requested fees and costs requested by the trustee. The objection will be sustained and, except for fees specifically disallowed in this ruling, the court will award the requested attorney's fees and expenses.

2. 15-29033-A-7 FRANCISCO PENA — MOTION TO SELL
CDH-2 — 3-18-16 [51]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $20,000 the estate's one-third tenant-in-common interest in a commercial real property in Fairfield, California to Qualified Investment Opportunities Corp. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The property is approximately 28,000 square feet of commercial space, currently utilized as a store named Mexican Meat Market. The debtor owned one-third tenant-in-common interest in the property along with two of his siblings.

After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property. The property is subject to $140,000 in outstanding property taxes and approximately $2.3 million of aggregate liens. The property needs much repair and update, with an estimated cost of approximately $400,000, including the installation of a new roof.

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).

3. 15-20634-A-7 NICHOLAS STANZIANO — MOTION TO SELL
DMW-2 — 3-11-16 [21]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $35,000 the estate's unencumbered interest in a vacant land real property in Grass Valley, California to Carlos Omran. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of payment of the real estate commission, in the amount of 10% of the purchase price.

The property was valued by the debtor at $16,721 and the debtor exempted $16,721 in the 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 commission to the estate's realtor, Jimmy Barbera, as consistent with the terms of his employment.

4. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 7-28-15 [71]
WELLS FARGO BANK, N.A. VS.

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

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

Given the entry of the debtor's discharge on August 7, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant had provided the trustee with time to market and sell the property. As the court has not heard from the parties about the outcome of the estate's efforts to sell the property, however, the court infers that the movant is not interested in prosecuting the motion with respect to the estate. Accordingly, the court is inclined to deny the motion as to the estate.

5. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — AMENDED MOTION TO REMOVE ATTORNEY OF RECORD
BLG-5 — 3-20-16 [171]

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

The motion will be granted.

Attorney Chad Johnson asks for permission to be removed as counsel of record for the debtors, given that his law firm and former associate attorney were removed as counsel of record for the debtors nearly 22 months ago, with another attorney taking over the representation of the debtors in this case.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the

efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

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

California Rule of Professional Conduct 3-700 provides that:

"*(A) In General.*

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

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

"*(B) Mandatory Withdrawal.*

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

"*(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

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

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

"*(C) Permissive Withdrawal.*

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

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

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

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

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

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

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

This case was filed on September 3, 2013. The debtors' counsel at that time was Bruce Charles Dwiggins. As Mr. Dwiggins worked at that time at the movant's law firm, the Bankruptcy Law Group, PC, and the movant also filed some pleadings on behalf of the debtors in this case (Dockets 109 & 110), the movant was also named as counsel of record for the debtors.

On June 23, 2014, pursuant to a request filed by Mr. Dwiggins, also executed by the debtors and their proposed new counsel (Docket 120), the court entered an order substituting Mark Ellis as attorney of record for the debtors, in the place of Mr. Dwiggins. But, the order did not remove the movant as counsel of record for the debtors. Docket 125.

As the June 23, 2014 order lists the movant's law firm, Bankruptcy Law Group, PC, also as being removed as counsel of record, the movant should have been listed by the order as being removed along with Mr. Dwiggins. Docket 125. Accordingly, this motion will be granted and the movant shall be removed as counsel of record for the debtors.

6. 15-24481-A-7 EMERY ULRICH — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 9-11-15 [12]
WELLS FARGO BANK, N.A. VS.

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real

property in Red Bluff, California.

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

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

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

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

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

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

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

7. 09-44085-A-7 MARY ROBERTS — AMENDED MOTION FOR CONTEMPT
SNM-6 — 3-10-16 [66]

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

The debtor asks that Anthony Faulkner be held in contempt of court and sanctioned for violating the debtor's chapter 7 bankruptcy discharge injunction in this case.

The debtor seeks:

(a) An order holding Mr. Faulkner in contempt of this Court's discharge order;
(b) An injunction against further noncompliance of the discharge order;
(c) An award of actual damages;
(d) An award of expenses including reasonable attorney's fees and costs;
(e) An award of $10,000 in non-compensatory sanctions; and
(f) For other such further relief as this Court deems just and proper.

Mr. Faulkner opposes the motion, contending that: his claim was not discharged,

invoking 11 U.S.C. § 523(a)(3)(A); the debtor committed perjury and gave a false oath when she knowingly failed to list his claim in the bankruptcy case.

This case was filed on November 3, 2009. Both parties acknowledge that Mr. Faulkner's claim was not listed by the debtor in her schedules and, as a result, he did not receive formal written notice of the bankruptcy case. Mr. Faulkner's claim is based on a 2005 promissory note seeking repayment of $75,000 plus 50% of the net proceeds from the sale of a real property in Vacaville, California.

The trustee filed a report of no distribution on December 4, 2009. The debtor received her chapter 7 discharge on February 10, 2010. Docket 35. The case was closed on June 4, 2010. Docket 56.

Mr. Faulkner continued to seek repayment of his claim from the debtor. On February 15, 2016, the debtor sent a letter to Mr. Faulkner, telling him in writing that his claim had been discharged in the instant bankruptcy case and asking him to stop collection efforts. Docket 64, Ex. 1. On February 25, 2016, Mr. Faulkner filed a state court complaint to collect on his claim against the debtor. Docket 64, Ex. 2.

Pursuant to a March 8, 2016 motion by the debtor (Docket 58), the court entered an order reopening the case on March 15, 2016. Docket 69. The instant motion was filed on March 10.

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

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

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

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

"*To be subject to sanctions for violating the discharge injunction, a party's violation must be 'willful.' The Ninth Circuit applies a two-part test to determine whether the willfulness standard has been met: (1) did the alleged*

offending party know that the discharge injunction applied; (2) and did such party intend the actions that violated the discharge injunction? In re Nash, 464 B.R. at 880 (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n. 7 (9th Cir. 2008), aff'd, 130 S.Ct. 1367, 176 L. Ed. 2d 158 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir.2006). For the second prong, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue. Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002). 'A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt.' Jarvar v. Title Cash of Mont., Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009)(citing Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009-10 (Bankr. D. Minn. 1994)); see also In re Sanburg Fin. Corp., 446 B.R. 793, 804 (S.D. Tex. 2011)(that the offending party may have not understood its actions to violate the discharge injunction does not negate the willfulness finding, even if true)."

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

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

First, Mr. Faulkner's claim was discharged when the court entered the debtor's discharge in this case. The court rejects Mr. Faulkner's reliance on 11 U.S.C. § 523(a)(3)(A) to argue nondischargeability. This statute provides that:

"(a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—

. . .

"(3) neither listed nor scheduled under section 521 (a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

"(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

"(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request."

Mr. Faulkner had actual knowledge of the instant bankruptcy case. He admits this in his own papers:

"What Faulkner had notice of was that the debtor had filed bankruptcy but had promised him that she wouldn't schedule his claim and that it would not be discharged. Faulkner did not have the kind of notice that would have altered

him to the fact that her debt to him was in jeopardy and that he needed to file a claim and challenge its discharge to protect his rights."

Docket 70 at 7.

The debtor's promise that she "wouldn't schedule his claim" clearly refers to Mr. Faulkner having actual knowledge of this case, *prior to* the debtor filing this case. As such, the exception to discharge under section 523(a)(3)(A) does not apply here.

Mr. Faulkner knowing of this case even before it was filed is consistent with the debtor's evidence that he was in a relationship and lived with her from 2005 through 2012. Docket 73 at 2. Mr. Faulkner even accompanied the debtor to her bankruptcy attorney appointments and her meeting of creditors. Id.

Also, the debtor's promise not to list Mr. Faulkner's debt has no legal relevance here. The debtor cannot exclude from discharge debt by promising not to list the debt in her schedules. While the debtor can fail to list debt in her schedules, it is bankruptcy law-including section 523(a)(3)-that determines whether that debt was discharged.

Second, another reason the section 523(a)(3)(A) exception to discharge does not apply here is that the trustee filed a report of no distribution and the creditors were never notified to file proofs of claim. No claims bar date was ever set in the case. Thus, the "in time to permit . . . timely filing of a proof of claim" aspect of section 523(a)(3)(A) was never triggered. See Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433, 1434 (9th Cir. 1993).

Third, to the extent Mr. Faulkner is invoking section 523(a)(3)(B), arguing that he would have challenged the dischargeability of his debt under section 523(a)(2)(A), had he been formally notified of the bankruptcy case, section 523(a)(3)(B) does not apply here for the same reason section 523(a)(3)(A) does not apply, *i.e.*, Mr. Faulkner had actual knowledge of the instant bankruptcy case in time to file a nondischargeability action. As discussed above, Mr. Faulkner knew of this bankruptcy case even before it was filed.

Fourth, given the foregoing and given the debtor's February 15, 2016 written notice to Mr. Faulkner to stop the collection of his discharged claim, Mr. Faulkner knew that the discharge injunction was applicable when he filed the state court action against the debtor on February 25.

The court rejects Mr. Faulkner's claim of ignorance about the debtor's bankruptcy case, as if he did not know which bankruptcy case the debtor was referring to in the February 15 notice. Given his approximately seven-year personal relationship with the debtor, Mr. Faulkner knew well of which bankruptcy case the February 15 notice was referring. Although the notice does not identify a case number, the notice expressly states that the case was filed in 2009 and the debtor received her bankruptcy discharge in 2010. Docket 64, Ex. 1.

Fifth, even if Mr. Faulkner did not actually know of this bankruptcy case and genuinely wanted to find out more information about the case – none of which this court believes, as opposed to talking to a paralegal, Mr. Faulkner could have simply called the debtor's counsel who prepared the February 15 notice.

Mr. Faulkner did not do this, however. Instead, he filed the lawsuit against

the debtor on February 25, 2016.

The court then has clear and convincing evidence that Mr. Faulkner knew the discharge injunction in this case to be applicable and, notwithstanding, he filed the state court action against the debtor. He obviously intended the filing of the state court action.

Sixth, turning to damages, the court will deny the debtor's request for $10,000 in noncompensatory sanctions. The court may not award punitive damages for violations of the discharge injunction because civil contempt sanctions are remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

Seventh, aside from attorney's fees and costs, the debtor's actual compensatory damages are identified as "humiliation, isolation, physical and emotional pain, exhaustion, and severe emotional distress, including worry and anxiety." Docket 63 at 3.

But, the court has no admissible or probative evidence to support any such damages sustained by the debtor. The debtor has not been qualified as an expert witness who may testify of specialized medical knowledge, much less as to her medical condition and whether the discharge violation was the actual and proximate cause of her health issues. Fed. R. Evid. 702. As a lay witness, the debtor is not allowed to render an opinion based on scientific, technical, or other specialized knowledge. Fed. R. Evid. 701(c).

She does not proffer the testimony of a qualified expert either. For example, her alleged "severe emotional distress" is a health condition that can be substantiated only by a medical professional who has examined the debtor.

More, the debtor gives very few details about how she suffered the harm she alleges. She identifies only a single instance of discharge violation, *i.e.*, the filing of the state court action on February 25. She does not say why she suffered the alleged harm, although she knew that Mr. Faulkner had actual knowledge of the bankruptcy case and a mere call to her attorney would have confirmed that neither section 523(a)(3)(A), nor 523(a)(3)(B) applies.

The court also questions how much of the alleged harm she suffered was due to the discovery of her not being entirely truthful in completing her schedules.

Eight, the debtor's attorney's fees in addressing Mr. Faulkner's violations are also unsubstantiated. The only evidence is a statement in one of the debtor's two declarations, "[t]o date, I have incurred $3,850.00 in attorney's fees and costs." Docket 63 at 3.

At best, this statement is hearsay, as the figure was not generated by the debtor herself but by her counsel who agreed to provide legal services on her behalf. Fed. R. Evid. 802. Yet, the record is devoid of a declaration from the debtor's counsel. The record is also devoid of what the $3,850 figure represents. The services have not been described and there is nothing to indicate the time spent on them.

Ninth, the court does not have to issue another injunction against Mr. Faulkner, given his noncompliance with the existing discharge injunction. The

answer to Mr. Faulkner's failure to abide by an injunction is not another injunction.

Finally, solely to coerce compliance with the discharge injunction, the court will sanction Mr. Faulkner $100 for every day his state court action against the debtor (to the extent seeking to enforce the claim) continues to be pending beyond the date an order on this motion is entered. The motion will be granted in part and denied in part.

8. 14-28885-A-7 REGINALD DAZO — MOTION TO AVOID JUDICIAL LIEN
CJY-2 — 2-11-16 [37]
VS. KELKRIS ASSOCIATES, INC.

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from February 29, 2016, in order for the debtor to serve his amended claim of exemption on all interested parties. The debtor has filed a new amended Schedule C and has served it on all interested parties. Dockets 43 & 44. An amended ruling from February 29 follows.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of $10,815.80 on May 16, 2014. The abstract of judgment was recorded with Solano County on June 26, 2014. That lien attached to the debtor's residential real property in Suisun City, 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 $330,607.98 as of the petition date. Dockets 39 & 1. The unavoidable liens totaled $286,215.96 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 39 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Schedule C. Dockets 39, 43.

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

9. 16-20099-A-7 DP AQUATICS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
FLP-1 — 3-14-16 [13]
KAREN DAVIS VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Karen Davis, seeks relief from stay to continue with a state court litigation against the debtor and four other defendants.

The debtor has filed opposition, pointing out that the state court has been settled. Since the filing of this motion on March 14, 2016, the movant signed a settlement agreement resolving the state court action, on March 23. Docket 21, Ex. B.

As the state court action has been resolved, this motion will be dismissed as moot.

10. 14-21184-A-7 SIMON RAMSUBHAG
14-2349
FUKUSHIMA V. SAHADEO ET AL

ORDER TO
APPEAR FOR EXAMINATION (RAY SAHADEO)
11-13-15 [32]

Tentative Ruling: None. The respondent shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

11. 14-21184-A-7 SIMON RAMSUBHAG
14-2349
FUKUSHIMA V. SAHADEO ET AL

ORDER TO
SHOW CAUSE
1-29-16 [38]

Tentative Ruling: The court issued this order to show cause because Ray Sahadeo did not produce documents or appear for an examination on January 25, 2016. The examination was continued to February 22, 2016 at 10:00 a.m. and then to March 7, 2016 at 10:00 a.m.

At the March 7 hearing, the court will consider assessing sanctions against Ray Sahadeo if it determines that Ray Sahadeo willfully failed to obey the court's November 13, 2015 order to appear at the January 25, 2016 examination.

If Ray Sahadeo fails to appear on March 7, the court also will consider sanctions to compel attendance at an examination and production of records, including authorizing the apprehension of Ray Sahadeo by the U.S. Marshall to compel such attendance and production.

FINAL RULINGS BEGIN HERE

12. 16-20404-A-7 BARRY ROSENBERG — MOTION FOR
JCW-1 — RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. — 3-9-16 [13]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Colfax, California. The property has a value of $226,000 and it is encumbered by claims totaling approximately $324,129. The movant's deed is in first priority position and secures a claim of approximately $268,828.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on March 3, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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.

13. 15-24710-A-7 HELEN KING
TAG-4
VS. BH FINANCIAL SERVICES, INC.

MOTION TO
AVOID JUDICIAL LIEN
3-18-16 [40]

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

The motion will be granted.

A judgment was entered against the debtor in favor of BH Financial Services, Inc., for the sum of $5,670.39 on July 29, 2013. The abstract of judgment was recorded with Sacramento County on January 27, 2014. That lien attached to the debtor's residential real property in Sacramento, 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 $200,000 as of the petition date. Dockets 1 & 42. The unavoidable liens totaled $332,946.52 on that same date, consisting of a mortgage in favor of Wells Fargo Home Mortgage for $281,250 and a mortgage in favor of Wachovia Dealer Services for $51,696.52. Dockets 1 & 42. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 34.

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

14. 16-21214-A-7 PATRICIA MAXIE

ORDER TO
SHOW CAUSE
3-14-16 [11]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments.

However, the debtor paid the fee in full on March 14, 2016. No prejudice has resulted from the delay.

15. 15-23221-A-7 JOHN NORMINGTON III AND
SSA-2 TERESA NORMINGTON

MOTION TO
EMPLOY REALTOR
3-11-16 [35]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor,

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

The motion will be granted.

The trustee requests approval to employ Bill Burns of Promociones El Dorado De Baja California, S.A. DE C.V. as a real estate broker for the estate. Mr. Burns will assist the estate with the marketing and sale of a real property in San Felipe, Baja, Mexico. The proposed compensation for Mr. Burns is a 15% commission on the final sale price (plus IVA Tax - Mexican added value tax - in the amount of 16% of the final commission amount).

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

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

16. 16-21227-A-7 DONALD SAYLES — ORDER TO SHOW CAUSE 3-14-16 [11]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on March 14, 2016. No prejudice has resulted from the delay.

17. 16-21238-A-7 DAVID SIEMER — ORDER TO SHOW CAUSE 3-14-16 [12]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on March 14, 2016. No prejudice has resulted from the delay.

18. 16-20539-A-7 CHRISTOPHER ACTON
JHW-1
DAIMLER TRUST VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-8-16 [12]

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, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2014 Smart Smartae. The outstanding debt under the lease agreement totals approximately $17,286. The debtor also has not made four pre-petition and one post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The court notes that the trustee filed a report of no distribution on March 7, 2016. And, the debtor has stated in the statement of intention that he will not be assuming the lease.

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

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

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

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

19. 11-42346-A-7 ERNEST BEZLEY
HCS-7
VS. GEORGE REED, INC.

OBJECTION TO
CLAIM
2-26-16 [285]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On January 9, 2012, claimant George Reed, Inc. filed a general unsecured proof of claim in the amount of $263,217.72 (claim no. 6-1).

The trustee objects to the proof of claim, arguing that the claim is barred by California's four-year statute of limitations on the cause of action giving rise to the subject claim.

The proof of claim is presumed to be prima facie valid. See 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. See In re Holm, 931 F.2d 620, 623 (9th Cir. 1991; In re Fullmer, 962 F.2d 1463, 1466 (10th Cir. 1992); In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. See In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Cal. Code Civ. Proc. § 337(2) provides a four statute of limitations for "*[a]n action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.*"

Cal. Com. Code § 2725 further provides that: "*(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.*"

An objection to a proof of claim is given the benefit of any defense that would be afforded to the debtor in defending against the claim, including a statute of limitations defense. In re Gridley, 149 B.R. 128, 132 (Bankr. D.S.D. 1992).

The claim is based on the breach of contract for the payment of services and materials provided to the debtor, for "a new road construction."

The date of the last services and materials invoice is February 28, 2007. The invoice requires payment by March 15, 2007. In other words, the final statute of limitations for a breach of the contract between the debtor and George Reed, Inc. expired in March 2011.

As the debtor filed this case on September 15, 2011, the statute of limitations for the subject claim has expired. Accordingly, the objection will be sustained.

20. 16-20856-A-7 CINDY COGIL — MOTION TO COMPEL ABANDONMENT
MMM-1 — 3-14-16 [9]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in her graphic design business, True Color Litho.

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

According to the motion, the business assets include the business name/customer list (valued at $500), receivables (valued at $600) and a business checking account with Sacramento Credit Union (with a balance of $852.57). The assets have an aggregate value of $1,952.57 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

21. 14-31664-A-7 MORRIS/SALLY COFFMAN — OBJECTION TO CLAIM
HMS-2
VS. GOLDEN GATE EXPRESS, INC. — 2-11-16 [30]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On February 11, 2015, claimant Golden Gate Express, Inc. filed a general unsecured proof of claim in the amount of $4,100 (claim no. 1).

The trustee objects to the proof of claim, arguing that the claim was not incurred by the debtors.

The court agrees with the trustee. The basis for the claim is a single invoice for $4,100. The claim was not incurred by the debtors. The invoice identifies C and H Transit, Inc. as the entity that incurred the claim.

Further, the claim is duplicative of claim no. 5, which attaches the same invoice (Invoice # 1633) attached to claim no. 1. The objection will be sustained.

22. 14-31664-A-7 MORRIS/SALLY COFFMAN — OBJECTION TO CLAIM
HMS-3
VS. SIERRA LOGISTICS GROUP, INC. — 2-11-16 [34]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On February 17, 2015, claimant Sierra Logistics Group, Inc. filed a general unsecured proof of claim in the amount of $9,100 (claim no. 3).

The trustee objects to the proof of claim, arguing that the claim was not incurred by the debtors.

The court agrees with the trustee. The invoice that serves as a basis for the claim identifies C and H Transit, Inc. as the entity that incurred the claim. Accordingly, the objection will be sustained.

23. 14-31664-A-7 MORRIS/SALLY COFFMAN — OBJECTION TO CLAIM
HMS-4
VS. ROTEX TRANSPORTATION, INC. — 2-11-16 [38]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On February 17, 2015, claimant Rotex Transportation, Inc. filed a general unsecured proof of claim in the amount of $7,050 (claim no. 4).

The trustee objects to the proof of claim, arguing that the claim was not incurred by the debtors.

The court agrees with the trustee. The invoice that serves as a basis for the claim identifies C and H Transit, Inc. as the entity that incurred the claim. Accordingly, the objection will be sustained.

24. 14-31664-A-7 MORRIS/SALLY COFFMAN — OBJECTION TO CLAIM
HMS-5
VS. GOLDEN GATE EXPRESS, INC. — 2-11-16 [42]

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

1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On February 18, 2015, claimant Golden Gate Express, Inc. filed an unsecured proof of claim in the amount of $4,750 (claim no. 5), $4,100 of which has been classified as a priority claim and $650 has been classified as a general unsecured claim.

The trustee objects to the proof of claim, arguing that the claim was not incurred by the debtors and the claim is duplicative of claim no. 1.

The court agrees with the trustee. First, the claim attaches a single invoice seeking a payment of only $4,100. There is no basis in the attachments to the claim for the additional $650 portion of the claim.

Further, the claim was not incurred by the debtors. The invoice that serves as a basis for the claim identifies C and H Transit, Inc. as the entity that incurred the claim. The objection will be sustained.

25. 12-33467-A-7 RONALD DUNCAN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DNL-18 — 3-14-16 [354]

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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,675.50 in fees and $11.75 in expenses, for a total of $9,687.25. This motion covers the period from May 8, 2013 through October 1, 2015. The court approved the movant's employment as the estate's accountant on May 20, 2013. In performing its services, the movant charged hourly rates of $195, $200, $300, $325 and $330.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation, (1) reviewing prior year tax returns, (2) assisting the trustee with tax issues pertaining to the liquidation of estate assets, (3) preparing 2012, 2013 and 2014 tax returns, (4) preparing 2012, 2013 and 2014 505(b) request letters, (5) reviewing California Franchise Tax Board audits, and (6) addressing tax issues specific to the bankruptcy estate of Kathleen Duncan, after consolidation of the two cases.

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

26. 12-33467-A-7 RONALD DUNCAN
DNL-19

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
3-14-16 [349]

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

The motion will be granted.

The chapter 7 trustee, Susan Smith, has filed first and final motion for approval of compensation. The requested compensation consists of $49,510.16 in fees and $2,081.54 in expenses, for a total of $51,591.70. The services for the sought compensation were provided from April 30, 2013 through March 10, 2016. The sought compensation represents 213.13 hours of services.

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

The movant will make or has made $1,198,338.54 in distributions to creditors, in the two substantively consolidated cases of Ronald Duncan and Kathleen Duncan. This means the cap under section 326(a) on the movant's compensation is $59,200.16 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $47,500 (5% of the next $950,000) + $5,950.16 (reasonable compensation not exceeding 3% of the next $198,338.54), totaling $59,200.16. Hence, the requested trustee fees of $49,520.16 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 LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) analyzing activities during the chapter 11 portion of the case,

(3) conducting the meeting of creditors,

(4) employing professionals to assist the estate in the administration of estate assets,

(5) selling real property of the estate,

(6) addressing numerous sales issues, such as reviewing offers, title reports, insurance information, communicating with the estate's realtor, disputing secured claims, etc.,

(7) communicating with the estate's counsel and accountant about various issues,

(8) addressing tax issues,

(9) negotiating settlements resolving various interests and claims, including a family trust interest and issues pertaining to claims and the administration of the related chapter 7 estate of the debtor's estranged spouse,

(10) assessing the abandonment of estate assets,

(11) reviewing and analyzing claims, and

(12) preparing final report.

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

27. 12-33467-A-7 RONALD DUNCAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-20 — 3-14-16 [360]

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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $110,670 in fees and $2,677.80 in expenses, for a total of $113,347.80. This motion covers the period from May 8, 2013 through

March 8, 2016. The court approved the movant's employment as the trustee's attorney on May 20, 2013. The court entered an order reemploying the movant as counsel for the estate on August 15, 2013. In performing its services, the movant charged hourly rates of $75, $150, $175, $200, $275, $400 and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) reviewing petition documents and assessing assets for administration,

(2) investigating the estate's interest in many real property assets,

(3) analyzing and disputing claims secured by the real properties and assisting the estate with the sale of some real properties,

(4) obtaining abandonment orders as to assets with no value to the estate,

(5) investigating the estate's interest in a family trust and identifying specific assets for administration,

(6) negotiating a settlement over the estate's interest in the family trust and obtaining court approval of the settlement,

(7) analyzing a claim asserted by the chapter 7 bankruptcy estate of the debtor's former spouse,

(8) negotiating settlement of the claim with the spouse's chapter 7 trustee, resulting in the substantive consolidation of the two bankruptcy cases,

(9) obtaining court approval of the settlement,

(10) negotiating a settlement with the debtor's former spouse to resolve a reimbursement claim for advances she made in the winding up of the debtor's affairs after his passing,

(11) analyzing and objecting to claims that represented debt of the debtor's construction company business,

(12) attending many court hearings and communicating with the trustee extensively about administrative decisions, and

(13) preparing and filing employment and compensation motions for the estate's professionals.

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

28.	14-32070-A-7 JRR-6	CAPITOL AIR SYSTEMS, INC.	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 3-9-16 [183]

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.

Gonzales & Sisto, accountant for the estate, has filed its second and final motion for approval of compensation. The requested compensation consists of $2,904 in fees and $12.65 in expenses, for a total of $2,916.65. This motion covers the period from January 4, 2016 through February 9, 2016. The court approved the movant's employment as the estate's accountant on March 2, 2015. Docket 113. In performing its services, the movant charged hourly rates of $200 and $330.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the preparation of 2015 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.

29. 16-20591-A-7 ANTHONY/DELILAH SIMPSON — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. EQUABLE ASCENT FINANCIAL, L.L.C. — 3-8-16 [21]

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 Equable Ascent Financial, 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 25.

30. 16-20692-A-7 KEVIN/CHRISTINA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1
SETERUS, INC. VS. — 3-8-16 [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 be dismissing the motion as moot, 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, Seterus, Inc., seeks relief from the automatic stay as to a real property in Lincoln, California.

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

On May 7, 2015, the debtors filed a chapter 7 case (case no. 15-23755). But, the court dismissed that case on August 20, 2015 pursuant to 11 U.S.C. § 707(b). The debtors filed the instant case on February 8, 2016. The prior chapter 7 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

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

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 9, 2016, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).