UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 20, 2015 at 10:00 a.m.

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

6, 8, 15,

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 18, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 4, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 11, 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 — 3-21-15 [16]
VS. CAVALRY PORTFOLIO SERVICES, L.L.C.

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. 13-35308-A-7 DOROTHY PARENT — MOTION FOR SUBSTITUTION
LCB-7 — 3-12-15 [243]

Tentative Ruling: The motion will be denied without prejudice.

Dorothy Swendeman moves for the court to substitute her in the place of Robert Swendeman, her late spouse, because Mr. Swendeman passed away on July 7, 2011,

over two years prior to the filing of this case on December 2, 2013. Since December 2, 2013, attorney Laurence Blunt has engaged in extensive litigation in this bankruptcy case, several appeals from orders entered by this court, and two associated adversary proceedings, as counsel for Robert Swendeman.

The trustee opposes the motion.

Fed. R. Civ. P. 25(a)(1), as made applicable here by Fed. R. Bankr. P. 7025, provides that:

"**(1) Substitution if the Claim Is Not Extinguished**. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record."

While Rule 25 governs the substitution of deceased parties in federal court, state law controls who is the proper party successor in interest and whether and to what extent a claim is extinguished by the party's passing. In re Baycol Products Litigation, 616 F.3d 778, 788 (8th Cir. 2010); see also Robert v. Wegmann, 436 U.S. 584, 598 (1991).

The court cannot take up the merits of the motion until all issues are properly before the court. The motion will be denied because, while it is purportedly being brought by Dorothy Swendeman, the reply to the opposition now states that Cynthia Swendeman asks for relief on behalf of Dorothy Swendeman, as one of Robert and Dorothy Swendeman's children. This is not what the motion states, however. The motion makes no mention of Cynthia Swendeman. Dockets 243 & 244. The motion refers only to Dorothy Swendeman as the moving party.

Although Mr. Blunt's declaration in support of the motion (Docket 245) mentions that Cynthia Swendeman has been authorized to act for Dorothy Swendeman as her attorney in fact, this is an inadmissible hearsay statement because the motion is not supported by a declaration from Cynthia Swendeman. Fed. R. Evid. 802.

And, while Mr. Blunt has submitted a declaration "from Dorothy Swendeman" in support of the reply to the opposition, that declaration has been executed by Cynthia Swendeman and it does not state that Cynthia Swendeman is acting as the attorney in fact for Dorothy Swendeman, as previously stated by Mr. Blunt in his declaration.

Cynthia Swendeman's declaration merely states that "Dorothy B. Swendeman has authorized me, her daughter, Cynthia E. Swendeman, to execute this declaration on her behalf." Docket 293 at 1.

However, this statement by Cynthia Swendeman is also inadmissible hearsay. Fed. R. Evid. 802. And, Cynthia Swendeman does not state why Dorothy Swendeman did not prepare and execute the declaration herself.

In any event, even if the declaration of Cynthia Swendeman were admissible, this evidence was not filed with the motion. It was filed with the reply to

the trustee's opposition, thereby not giving parties in interest adequate opportunity to respond to evidence that should have been submitted with the motion. This is sandbagging.

In short, the movant has not carried her burden of persuasion in the motion as to facts asserted in the motion. It is unnecessary and unhelpful to address the merits of the motion, given that parties in interest have not had an opportunity to respond to the evidence submitted with the reply, which should have been submitted with the motion. The motion will be denied without prejudice.

3. 13-35308-A-7 DOROTHY PARENT — MOTION FOR SANCTIONS, ATTORNEY'S FEES AND COSTS AND FOR EQUITABLE SUBORDINATION
BJ-2 — 1-9-15 [119]

Tentative Ruling: None. The record has been closed and this matter is under submission.

4. 13-35308-A-7 DOROTHY PARENT — ORDER TO SHOW CAUSE
2-25-15 [223]

Tentative Ruling: None. The record has been closed and this matter is under submission.

5. 15-20513-A-7 DANIEL/KRISTEN LOCKHART — MOTION TO DISMISS
HMS-1 — 3-14-15 [22]

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

The trustee moves for dismissal because the debtors did not attend their initial meeting of creditors held on March 4, 2015.

The debtors' failure to appear at the meeting of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

6. 10-49228-A-7 MARIO/NITZE JAIMEZ — MOTION TO SUBSTITUTE ATTORNEY
BLG-1 — 3-16-15 [66]

Tentative Ruling: The motion will be granted.

Attorney Chad Johnston asks for permission to withdraw as counsel for the debtors because of lack of communication.

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 November 4, 2010. The trustee filed a report of no distribution on December 15, 2010, the debtors received their discharge on February 22, 2011, and the case was closed on March 2, 2011.

On December 18, 2014, the United States Trustee filed a motion for reopening of the case for the administration of previously unscheduled labor law claims. The court reopened the case on December 22, 2014.

Although the movant has attempted to contact the debtors via both telephone and mail, the movant has received no response from the debtors. The movant contacted the debtors at their last known telephone number. However, that telephone number is no longer "valid." The movant also mailed a letter on February 25, 2015 to the debtors' last known address. No response has been received from the debtors. Docket 67 at 2.

The lack of communication from the debtors renders it unreasonably difficult for the movant to carry out his employment effectively. This is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The court will permit the movant's withdrawal from this case. The motion will be granted.

7. 09-44733-A-7 ROBERT WIEMER — MOTION TO COMPEL ABANDONMENT 2-26-15 [190]
ULC-2

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks to compel the trustee to abandon the estate's interest in a lawsuit against Nationstar Mortgage, L.L.C., Select Portfolio Servicing,

L.L.C., Bank of America, Cal-Western Reconveyance, L.L.C., and U.S. Bank, including claims for intentional misrepresentation, negligent misrepresentation, promissory estoppel, negligence, trespass, and violation of Business and Professions Code § 17200. The lawsuit was filed on October 9, 2014 and it pertains to the debtor's real property in Carnelian Bay, California.

The trustee opposes the motion, contending that it has consequential value for the estate.

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.

This case was filed on November 11, 2009 as a chapter 11 proceeding. It was converted to chapter 7 on June 16, 2010. The trustee filed a notice of assets on September 22, 2010 and October 20, 2010. After administering some assets, the trustee filed his final report on August 8, 2011. The case was closed on August 6, 2012.

On February 6, 2015, the debtor filed a motion to reopen the case so he could amend the petition documents to disclose the subject lawsuit, as it was not scheduled apparently prior to the closing of the case.

The debtor contends that the lawsuit has an unknown value and that, at best, it may result in a non-monetary relief in favor of the debtor.

However, while the foregoing may be true, a $50,000 payment was made on behalf of the debtor apparently within the 90-day preference period prior to the filing of the bankruptcy case on November 11, 2009. The trustee is still assessing the value of the lawsuit to the estate, especially in light of the probable preference payment, which was not disclosed in the debtor's statements of financial affairs. See Dockets 10 at 30 & 105 at 31. Given this, the court is not persuaded that the lawsuit is of inconsequential value to the estate. Accordingly, the motion will be denied.

8. 13-30835-A-7 RICK HENDRICKS — MOTION TO APPROVE COMPENSATION FOR TRUSTEE 3-30-15 [68]
JB-1

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

The motion will be granted.

The chapter 7 trustee, John Bell, has filed his first and final motion for approval of compensation. The requested compensation consists of $13,702.71 in

fees and $20 in expenses, for a total of $13,722.71. The services for the sought compensation were provided from August 16, 2013 through March 18, 2015. The sought compensation represents 47.60 hours of services.

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

The movant will make $209,054.20 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $13,702.71 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $7,952.71 (5% of the next $950,000 (or $159,054.20)). Hence, the requested trustee fees of $13,702.71 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." The movant's services included, without limitation: (1) reviewing petition documents and analyzing assets, (2) communicating with the United States Trustee about reopening of the case, (3) employing legal professionals for the estate, (4) discussing strategy for the recovery of assets with counsel for the estate, (5) reviewing documents pertaining to the Hendricks Family Trust, (6) reviewing and analyzing filed claims, (7) preparing final report and reconciling assets, and (8) preparing compensation motion.

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

9.	12-37440-A-7 SCB-2	ROBERT SHAPIRO AND THERESA MARTINEZ-SHAPIRO	MOTION TO SELL 3-11-15 [19]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $18,000 the estate's unencumbered interest in the nonexempt portion of the debtor's chiropractor receivables to the debtor.

The receivables have a scheduled value of $72,867.35. The debtor has collected $13,234.83 on account of $34,861 of the receivables. This is a 37.96% collection rate. Applying the same collection rate to the remaining $38,006.35 of the receivables and subtracting the debtor's $9,523.53 exemption, leaves the estate with an interest of approximately $4,903.68.

The parties arrived at the $18,000 proposed purchase price by adding the approximately $4,903 interest in the remaining nonexempt receivables to the $13,234.83 already collected, and rounding that figure down.

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. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-9 — 3-16-15 [93]

Tentative Ruling: The motion will be denied without prejudice.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its second and final motion for approval of compensation.

The requested compensation consists of $4,523 in fees and $141.98 in expenses, for a total of $4,664.98. The award based on the movant's first motion consisted of $15,794 in fees and $107.59 in expenses, for a total of $15,901.59.

This motion covers the period from October 30, 2014 through the present. The court approved the movant's employment as the trustee's attorney on July 9, 2013. In performing its services, the movant charged hourly rates of $150, $175, $195, $275, and $400.

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 motion will be denied without prejudice because the court cannot tell from the papers which services pertain specifically to the second interim portion of the request, namely, services rendered after October 29, 2014. When multiple compensation motions are involved, the final compensation motion should dedicate a separate summary of the work performed solely during the last interim period.

Although the motion mentions services where the movant assisted special counsel in obtaining approval of its compensation, the special counsel's compensation was not denied until December 1, 2014, over one month after the end of the movant's first interim compensation period, and the motion does not identify the time period for such services.

More, the motion for special counsel compensation that was denied by the court, was filed on November 3, 2014, after the October 29, 2014 end of the movant's first interim period. This motion, however, is not clear that work on the special counsel compensation motion is part of the movant's last interim period.

In short, giving the court one comprehensive summary of services performed during all interim periods is not helpful in identifying the services performed only during the last interim period.

11. 14-26441-A-7 MICHAEL/JEANETTE DELOZIER — MOTION TO SELL
JRR-1 — 3-16-15 [51]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell, as is and with no warranties, for $110,000 the estate's unencumbered interest in a real property in Olivehurst, California to Jeffrey Linarez, Jr. 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 that the sale will net approximately $102,249 for the estate.

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 substantial 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 6% real estate commission, consistent with the order approving the employment of the real estate broker.

12. 13-29754-A-7 TIMOTHY/SHAWN POLI — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER
BHS-3 — 3-25-15 [54]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell, as is and with no warranties or guarantees, for $400,000 the estate's 50% interest and Jade Daly's (previously Jade Cropper) 50% interest in a real property in Vacaville, California to Mark Augustine and Michele Kish. The trustee is selling the entire property pursuant to a compromise with Jade Daly that was approved by the court. Jade Daly will received 50% of the net proceeds from the sale, as prescribed by the compromise between her and the trustee.

The only encumbrance disclosed in the motion is an $83,545.98 mortgage in favor of Generation Mortgage Company.

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 5% real estate commission, as authorized by the court's approval of Thomas Rapisarda's employment as real estate broker for the estate. Docket 40.

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 substantial 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.

13. 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.

14. 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.

15. 15-22291-A-7 DRAWING BOARD VENTURES, INC.
RHG-1
PLEASANTON MANOR, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-3-15 [9]

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, Pleasanton Mannor, L.L.C., seeks relief from the automatic stay with respect to a commercial real property in Roseville, California. The debtor had been leasing the property from the movant. The debtor defaulted under the lease agreement and the movant filed an unlawful detainer action in state court against the debtor on November 6, 2014. After a brief removal of the action to the district court, the action was remanded back to state court and the movant obtained a judgment for possession and a writ of possession on March 13, 2015. The lock-out was scheduled for March 24. The debtor filed the instant bankruptcy case on March 23, 2015.

This is a liquidation proceeding. The debtor is not operating and it has no ownership interest in the property as it is leasing it only. The foregoing 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) in order to permit the movant to proceed with the eviction action against the debtor in state court. No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property as permitted by the state court.

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 waived.

16. 14-29292-A-7 JAMES KING
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-15 [37]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Bank, is seeking relief from stay as to a 2009 VW Jetta vehicle.

However, the motion will be dismissed as moot given that the court is

dismissing the case. Dismissal of the case automatically dissolves the stay. See 11 U.S.C. § 362(c)(2)(B). The movant is not seeking retroactive or in rem relief from stay.

17. 14-29292-A-7 JAMES KING — MOTION TO DISMISS CASE
MAS-1 — 2-2-15 [30]

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

Creditor Ethan Conrad seeks dismissal of this case solely pursuant to 11 U.S.C. § 707(b)(2), arguing that the debtor's debts are primarily consumer debts under section 707(b)(1), and that the presumption of abuse exists under section 707(b)(2)(A).

The movant is not seeking dismissal pursuant to 11 U.S.C. § 707(b)(3).

11 U.S.C. § 707(b)(1) provides that, after notice and a hearing, on its own motion or on a motion by the U.S. Trustee, the court may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it concludes that the granting of chapter 7 relief would be an abuse of the chapter 7 provisions.

A presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) when a debtor's current monthly income, reduced by the amounts permitted by subsections (ii), (iii), and (iv) of 11 U.S.C. § 707(b)(2)(A), and multiplied by 60, is no less than the lesser of 25% of the debtor's non-priority unsecured claims or $7,475, whichever is greater, or $12,475. See 11 U.S.C. § 707(b)(2)(A)(i), as amended by 78 F.R. 12089.

In other words, if after deducting all allowable expenses from a debtor's current monthly income, the debtor has less than $124.58 in net monthly income (*i.e.*, less than $7,475 to fund a 60 month plan), a chapter 7 petition is not presumed abusive. If the debtor has monthly income of more than $207.92 (or $12,475) to fund a 60-month plan, a chapter 7 petition is presumed abusive. And, if the debtor has between $124.58 and $207.92 of monthly disposable income, a presumption of abuse exists if that sum, when multiplied by 60 months, will pay 25% or more of the debtor's non-priority unsecured debts.

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

A review of the debtor's petition documents shows that his debts are primarily consumer debts. A review of Schedule D shows that the collateral for the debtor's three secured debts - totaling approximately $301,564 - is a real property, a vehicle and a motorcycle, which are reflective of consumer debt. Schedule E lists no debt and Schedule F lists only approximately $48,340 in debt. Accordingly, the debtor's debts were incurred mainly for a personal, family or household purpose.

Further, the movant argues that the debtor's actual expenses should be less and not as represented on the debtor's schedules:

(1) Monthly tax payments by the debtor should be reduced from $1,482 to $599,

which is a difference of $882. In other words, the debtor is over-withholding taxes from income.

Although the debtor appears no longer to have losses from his business to claim as tax deductions on his returns, his new mortgage qualifies him to claim mortgage interest tax deductions that approximate his past business losses. Past annual business losses have been approximately $24,000, whereas estimated annual mortgage interest tax deductions would amount to approximately $18,350.

(2) Monthly charitable donations by the debtor are not $1,000 as indicated in both the Original Schedule J and Amended Schedule J (Dockets 1 & 22), but they are approximately $704, which is a difference of $296. See also Docket 44, Ex. B at 16-17 (the debtor's counsel confirming at the continued meeting of creditors that the debtor gave him documentation reflecting that the debtor's charitable contributions to "his church . . . for all of 2014" totaled $8,443 or $703.58 a month). The court has no evidence in the record for charitable contributions by the debtor other than to his church and other than the contributions the debtor admitted at the meeting of creditors. Id.

(3) Monthly motorcycle loan payments of $100 should be $0.00 because the debtor indicated at the meeting of creditors that he intended to surrender his motorcycle, which is a difference of $100. American Express bank v. Smith (In re Smith), 418 B.R. 359, 369 (B.A.P. 9th Cir. 2009) (holding that expenses related to property being surrendered to a secured creditor are not reasonable and necessary expenses that may be deducted from current monthly income). The court has no evidence in the record that the debtor is planning to do anything with his motorcycle other than what he stated at the meeting of creditors. See also Docket 44, Ex. B at 30 (the debtor responding "[y]es, actually" to the question "do you intend to surrender the motorcycle?").

(4) Monthly motorcycle insurance payments of $188 should be $0.00 because the debtor indicated at the meeting of creditors that he intends to surrender his motorcycle, which is a difference of $188. American Express bank v. Smith (In re Smith), 418 B.R. 359, 369 (B.A.P. 9th Cir. 2009) (holding that expenses related to property being surrendered to a secured creditor are not reasonable and necessary expenses that may be deducted from current monthly income).

(5) Monthly voluntary 401(k) contributions of $395 should be $0.00 because, the movant argues, "[s]uch amounts are not necessary expenses within the meaning of 11 U.S.C. § 707(b)(2)(a)(ii) [*sic*]." Parks v. Drummond (In re Parks), 475 B.R. 703, 709 (B.A.P. 9th Cir. 2012).

In other words:

- the amount in **line 22A** should decrease from $472 to $284 (subtracting the insurance cost for the motorcycle);

- the amount in **line 25** of Form B22A should decrease from $1,482.32 to $599 (due to over-withholding);

- the amount in **line 40** should decrease from $1,000 to $704 (subtracting the overstated charitable donations); and

- the amount in **line 42** should decrease from $1,654.65 to $1,516 (subtracting the motorcycle debt payment).

While the court agrees that voluntary 401(k) contributions are not viable

deductions in the calculation of the debtor's disposable income, the court has been unable to locate such deductions in the debtor's Form B22A. Nor is the motion helpful in pointing out where such contribution is deducted in the calculation of the debtor's monthly disposable income, which is a negative $974.94, as reflected in line 50 of Form B22A.

Nevertheless, the foregoing will alter the debtor's monthly disposable income for purposes of section 707(b)(2).

The change in lines 22A and 25 reduces **line 33** from $4,699.67 to $3,628.67. The change in line 40 reduces **line 41** from $1,185.10 to $889.10. The change in line 42 reduces **line 46** from $1,668.75 to $1,530.10. This in turn reduces **line 47** and **line 49** from $7,553.52 to $6,047.87.

To calculate line 50 - the debtors' monthly disposable income under section 707(b)(2), the amount in line 49, $6,047.87, must be subtracted from the amount in line 48, $6,578.58. This yields $530.71 for **line 50** and the debtor's monthly disposable income under section 707(b)(2).

This amount obviously exceeds the statutory threshold of $207.92. The court concludes then that there is a presumption of abuse under section 707(b)(2).

The debtor has not rebutted that presumption, nor has he requested conversion of the case to chapter 13, even though the debtor appeared at the initial February 23 hearing on this motion and the court gave him an opportunity to file written opposition to the motion. No written opposition has been filed to the motion. The last day to file such opposition was April 6, 2015. Docket 36.

By not filing a timely written opposition to the motion (or obtaining an extension of time to file opposition before the deadline expired), the debtor has waived his right to oppose the motion, including making arguments at the continued April 20 hearing. Accordingly, the motion will be granted and the case will be dismissed.

18. 13-34696-A-7 JEFFREY JOHNSON — MOTION TO SET ASIDE 3-13-14 [81]
JBJ-4

Tentative Ruling: The motion will be denied.

On March 13, 2014, the debtor filed a motion to vacate the discharge entered automatically by the clerk on March 4, 2014. Docket 81. The hearing on the motion was set on March 24, 2014. Docket 87. But, the debtor did not appear at that hearing on the motion to argue and/or dispute the court's tentative ruling. Docket 89. As result of the debtor's failure to appear and dispute the tentative ruling, the court adopted that ruling as the final ruling on the motion and entered an order denying the motion. On March 26, 2014, this court entered an order denying the debtor's motion to vacate the March 4, 2014 entry of the debtor's chapter 7 discharge. Docket 93.

The debtor nevertheless appealed that order to the United States District Court for the Eastern District of California. Docket 95.

On January 30, 2015, the district court entered an order vacating this court's order denying the debtor's motion to vacate the discharge.

Specifically, the district court ordered "a determination of whether the bankruptcy court committed a clerical error under FRCP 60(a) [in entering the debtor's bankruptcy discharge] and whether Appellant's medical treatment between February 24, 2014 and March 4, 2014 constitutes excusable neglect under FRCP 60(b)." Case No. CIVS. No. 14-cv-00889-TLN, Docket 15 at 5.

Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave."

Fed. R. Bankr. P. 4004(c)(1) prescribes that:

"In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, except that the court shall not grant the discharge if:

(A) the debtor is not an individual;

(B) a complaint, or a motion under §727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;

(C) the debtor has filed a waiver under §727(a)(10);

(D) a motion to dismiss the case under §707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. §1930 (a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. §1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. §1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management if required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under §727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption is in effect under §524(m) that a reaffirmation agreement is an undue hardship and the court has not concluded a hearing on the presumption; or

(L) a motion is pending to delay discharge, because the debtor has not filed

with the court all tax documents required to be filed under §521(f)."

A chapter 7 bankruptcy discharge is not entered upon a notice and a hearing. It is entered automatically and promptly "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)," provided all conditions for its entry are satisfied. The language that "the court shall forthwith grant the discharge," is mandatory and not permissive, indicating that the entry of discharge is mandatory "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)."

If all conditions for discharge entry are satisfied but the debtor desires to delay or avert discharge entry, it is incumbent on him to file a motion to delay the entry of discharge.

Fed. R. Bankr. P. 4004(c)(2) provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain."

The debtor may also file a waiver of a discharge under 11 U.S.C. § 727(a)(10), averting the entry of discharge altogether. Fed. R. Bankr. P. 4004(c)(1)(C).

A chapter 7 debtor knows the approximate date for the automatic entry of its chapter 7 bankruptcy discharge when the court issues a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines. In this case, that notice was issued by the court on November 19, 2013, one day after this case was filed on November 18, 2013. Docket 8.

The notice contains the deadline for filing objections to discharge and objections to the dischargeability of debts. Docket 8. Provided all conditions for the entry of discharge are satisfied, the discharge is entered on or soon after that date. Such conditions include, but are not limited to, the absence of a pending motion to delay the discharge, the absence of a waiver under section 727(a)(10), the filing of a personal financial management course certificate, and the absence of a complaint objecting to the debtor's discharge.

In other words, once all conditions for discharge entry are satisfied, the discharge is entered automatically, regardless of whether the debtor is ill, has a pending motion to convert the case to a chapter 13 proceeding or subjectively desires the entry of the discharge. These are not conditions to the automatic entry of discharge. See Fed. R. Bankr. P. 4004(c)(1).

When all conditions for the entry of discharge are satisfied, the only way for a debtor to delay or avert the entry of a discharge is to file a motion to delay the discharge entry or request discharge waiver under section 727(a)(10).

As noted by this court in its March 24, 2014 ruling on the debtor's motion to vacate the discharge:

"The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15." Docket 89 at 2.

"More, the debtor had filed a motion to convert the case on January 24, 2014,

which was heard and denied on February 24. Dockets 50, 68, 73. The debtor also filed a personal financial management course certificate on February 12, 2014. Docket 60." Docket 89 at 2. "The court also notes that the debtor did not file a motion to delay the entry of discharge." Docket 89 at 2.

"The court entered the debtor's discharge timely, after the debtor filed his personal financial management course certificate, after his first conversion motion was denied, and before the debtor's second conversion motion appeared on the docket. The entry of discharge was not a mistake." Docket 89 at 2.

The court also notes that there was no pending complaint objecting to the debtor's discharge, at the time the debtor's discharge was entered.

Accordingly, there was no clerical mistake or a mistake arising from oversight or omission, in the entry of the debtor's discharge.

Next, the debtor's medical treatment between February 20, 2014 and March 4, 2014 was not excusable neglect that warrants the setting aside of the discharge. Docket 86 at 2 (indicating that the medical treatment started on February 20 and not February 24).

The debtor's argument is in essence that he would have timely filed a motion to delay the entry of discharge or request for discharge waiver under section 727(a)(10), but for his medical treatment between February 20, 2014 and March 4, 2014.

The first and foremost problem with this argument is that the debtor assumes he would have prevailed on his motion to delay the discharge or the court would have approved a written waiver of discharge. See 11 U.S.C. § 727(a)(10) (requiring that the court approve the written waiver of discharge).

Stated differently, the debtor's medical treatment could be excusable neglect only for his not filing a motion to delay the entry of discharge or not filing a waiver under section 727(a)(10). His medical treatment could not be excusable neglect for the automatic entry of his discharge.

The debtor's good medical condition or availability to file a motion to delay the discharge or waiver under section 727(a)(10) is not a condition to the automatic entry of the debtor's discharge. Unless the motion to delay or request for waiver is filed, the discharge is entered automatically.

Even if the debtor's medical treatment is excusable neglect for his not filing a motion to delay the entry of discharge or request for a section 727(a)(10) waiver, it could not be excusable neglect for the discharge entry as the court would still have to adjudicate the merits of the motion to delay and/or approve the waiver.

Fed. R. Bankr. P. 4004(c)(2) provides that "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain." 11 U.S.C. § 727(a)(1) also provides that "The court shall grant the debtor a discharge, unless . . . the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter."

The excusable neglect analysis under Rule 60(b) then is one step removed from the subject entry of discharge.

Additionally, the debtor's medical treatment between February 20, 2014 and March 4, 2014 was not excusable neglect.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

As noted by this court in its March 24, 2014 ruling on the debtor's motion to vacate the discharge:

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

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

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

Docket 89 at 2.

Even if this court were to somehow overlook the necessity for adjudication of the motion to delay discharge entry or approval of the section 727(a)(10) waiver, the debtor's treatment is not excusable neglect for his failure to file a motion to delay or waiver, given that the treatment came after the approximate date for the entry of discharge.

"The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was February 10, 2014. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor on November 21, 2013. Docket 8, 13, 15." Docket 89 at 2.

Therefore, the debtor's motion to delay entry of discharge or request for approval of the section 727(a)(10) waiver should have been filed with the court on or prior to February 10, 2015, the approximate date for entry of discharge. Nonetheless, his medical treatment did not start until approximately February 20, 2014. Docket 86 at 2.

This means that there was no causal link between his medical treatment and his failure to file the motion to delay entry of discharge. The treatment came after the approximate February 10, 2014 proposed discharge date.

Further, even if there is a causal link between the debtor's medical treatment and his failure to file a timely motion to delay discharge entry, the treatment was not excusable neglect for the failure to file the motion to delay or section 727(a)(10) waiver.

The debtor knew of the approximate date when his discharge was to be entered, within approximately several days of his filing the case on November 18, 2013. See Dockets 8, 13, 15. As noted in the court's March 24, 2014 ruling, the debtor was served with the notice of chapter 7 bankruptcy case on November 21, 2013. Docket 89 at 2.

The court also notes that the debtor's first motion for conversion to chapter 13 was filed on January 24, 2014, meaning that the debtor knew at the least then of his desire not to stay in chapter 7. Docket 50.

January 24, 2014 was more than two weeks prior to the approximate February 10, 2014 discharge date and was approximately one month prior to the start of the debtor's medical treatment.

Hence, the neglect in not filing the motion to delay entry of discharge or section 727(a)(10) waiver, resulting from the treatment, was not excusable as it was within the debtor's reasonable control - since November 2013 and since January 24, 2014 - to seek a delay of discharge entry or waiver approval.

More, the failure to file the motion to delay discharge entry or waiver approval request prior to the March 4, 2014 bankruptcy discharge has significantly affected this bankruptcy proceeding. It has resulted in the entry of discharge and conclusion of this bankruptcy case. As the trustee had issued a report of no distribution on December 24, 2013, the only remaining event in the case was the entry of the debtor's discharge.

In addition, the court has reported the debtor's discharge to all of his creditors. Dockets 74 & 80. The creditors were served with the debtor's discharge on March 6, 2014. Docket 80. The creditors have relied on that discharge to finalize their accounts with the debtor and make appropriate credit reporting of the debtor.

Vacating the entry of discharge would prejudice the creditors in that they have relied already on the discharge to finalize their accounts with the debtor. It would require notifying the creditors that the discharge of the debtor's debts has been reversed, necessitating their reopening of the debtor's accounts, revisiting collection activities and reversing their credit reporting of the debtor.

This court is also unconvinced that the debtor has acted in good faith in not timely filing a motion to delay discharge entry or waiver approval request, when he had ample time to do so. As outlined above, the debtor knew of the approximate February 10, 2014 discharge date as early as November 2013 and had sufficient time to file a motion to delay, even after he filed his first motion to convert the case to chapter 13 on January 24, 2014.

Furthermore, even if somehow the debtor's medical treatment is excusable neglect for his failure to timely file a motion to delay discharge entry or

waiver approval request, this does not warrant setting aside the discharge entry. The filing of a motion to delay discharge entry or to approve a discharge waiver does not automatically translate into a delay of discharge entry or waiver approval. The court could have easily denied such a motion by the debtor.

The debtor still should have filed and the court still should have had the opportunity to adjudicate his motion to delay discharge entry or to approve discharge waiver, before the automatic entry of discharge on March 4, 2014.

Filing a motion to delay discharge entry or to approve discharge waiver after actual discharge entry makes such a motion moot. Before the court could ever address such a motion, it must first set aside the debtor's entry of discharge, *i.e.*, the instant motion.

However, as outlined above, the court cannot set aside the discharge. There was no error under Rule 60(a) in the entry of the discharge and the medical treatment was not excusable neglect for the entry of the discharge, given that the discharge was entered automatically and all conditions for discharge entry were satisfied. Bootstrapping excusable neglect for the debtor's failure to file a motion to delay discharge entry or waiver approval request to the entry of the discharge does not warrant setting aside of the discharge entry.

Finally, the debtor is seeking to have the entry of discharge set aside in order to have his motion to convert to chapter 13 heard by the court. "Without the Discharge of Debtor being set aside, my motion to convert will not be heard." Docket 83 at 3.

But, this is not true. As a general rule, 11 U.S.C. § 706(a) permits a chapter 7 "debtor [to] convert a case under this chapter to a case under chapter . . . 13 of this title at any time." 11 U.S.C. §706(a). The Tenth Circuit held in In re Young, 237 F.3d 1168, 1173-74 (10th Cir. 2001), that an eligible debtor has a right to seek conversion at any time, including after the debtor receives his discharge.

As in Young, other courts hold that under the plain language of the statute, conversion to a chapter 13 is allowed after a chapter 7 discharge. See In re Street, 55 B.R. 763, 765 (B.A.P. 9th Cir. 1985); In re Mosby, 244 B.R. 79, 83-84 (Bankr. E.D. Va. 2000) (both finding that "at any time" under § 706(a) includes post-discharge conversions).

According to the Tenth Circuit, "[t]he provisions of 11 U.S.C. § 1325 ensure that a Chapter 13 plan arising out of a conversion from Chapter 7 will be properly scrutinized by the bankruptcy court before the plan is confirmed, mitigating the danger of abuse." In re Young, at 1174.

Accordingly, the debtor may seek conversion to chapter 13, although he has received a chapter 7 discharge.

The court notes that the debtor's second motion to convert to chapter 13, filed on March 4, 2014 and heard by the court on March 24, 2014, was not resolved on the merits. The court dismissed it due to its violation of Fed. R. Bankr. P. 2002(a)(4). Dockets 75 & 91.

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

of the hearing. The motion papers were served on March 4, 2014, 20 days prior to the March 24 hearing on the motion. Docket 79."

Docket 91.

The debtor's first conversion motion, filed on January 24, 2014 and heard by the court on February 24, 2014, was denied without prejudice. Dockets 50 & 68.

"*Final Ruling: The motion will be denied without prejudice.*

"*First, the motion has not been served on three creditors listed in the verified master address list, including Diversified Adjustments, Enhanced Recovery Company, and Stockton Boat Works. Dockets 12 & 61. Also, the motion has been served at the wrong address on the San Joaquin County Collections, 350 East Weber Avenue Stockton, CA 95202. Docket 61. According to the master address list, however, the address for the San Joaquin County Collections is 750 East Weber Avenue Stockton, CA 95202.*

"*Second, the motion 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).'*

"*Third, the motion violates Local Bankruptcy Rules 9014-1(d)(2) and (3), as it is not accompanied by a separate notice of hearing telling parties in interest whether and when to file opposition to the motion.*"

Docket 68.

The debtor has filed no further motions for conversion to chapter 13, after the court denied his motion to set aside the discharge entry and dismissed his second conversion motion, on March 27, 2014. Dockets 93 & 94.

Finally, the court will address the April 6, 2015 supplemental filing by the debtor. Docket 129. In that pleading, the debtor complains that the court "has focused its attention only on the discharge in its past ruling and may have overlooked the importance of the conversion from Chapter 7 to Chapter 13." Docket 129 at 2. The debtor argues that he has an absolute right to convert to chapter 13, "even after a chapter 7 discharge has been entered." Docket 129 at 3.

One, the reason the court has focused on the chapter 7 discharge is that the debtor appealed the order denying the setting aside of his discharge. He did not appeal the orders denying and dismissing his conversion motions.

More, the filing of a motion to convert to chapter 13 does not halt the entry of the chapter 7 discharge. Thus, such a motion has no bearing on the automatic entry of the chapter 7 discharge.

In short and as extensively discussed above, if the debtor wanted not to have the automatic chapter 7 discharge entered, he should have filed a motion to delay the discharge or request for discharge waiver. The debtor did neither. He chose to file a conversion motion which had no impact on the entry of the discharge. The debtor filed the wrong motion. The court did nothing wrong. That is why his chapter 7 discharge was entered.

Two, as stated by the court above, the debtor may file a motion for conversion to chapter 13, although he has received a chapter 7 discharge already.

However, the debtor's right to conversion is not absolute and the debtor could not have moved for conversion to chapter 13 ex parte. The debtor's contention to the contrary is meritless. Fed. R. Bankr. P. 2002(a)(4) requires service of conversion motions on all creditors. Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Three, before the case can be converted to chapter 13, the court will have to adjudicate a motion to convert. The debtor's supplemental pleading seems to be misguided in expecting that the court will somehow convert the case to chapter 13 in connection with the adjudication of this motion.

Four, the debtor is once again rearguing the setting aside of his discharge. Yet, he has added nothing new to the facts addressed by the court above already. The entry of the discharge was automatic and the debtor was given notice of the date when that discharge was to be entered, when he filed his case. In other words, it was incumbent on the debtor to do something to stop or delay the entry of the discharge. He did nothing and the discharge was entered. The court has analyzed the grounds under Rule 60(a), Rule 60(b) and Pioneer several times now.

The court is also puzzled about why the debtor is seeking to have the chapter 7 discharge set aside when the entry of that discharge has not prejudiced him from seeking conversion as he would have had the opportunity to do prior to the entry of that discharge.

Five, the supplemental pleading filed by the debtor (Docket 129) - although making factual assertions - is not supported by a declaration establishing those factual assertions. This is yet another basis for denying the relief sought by the debtor in that pleading.

19. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-2
VS. PENNYMAC HOLDINGS, L.L.C. — 3-19-15 [76]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Auburn, California, in an effort to strip down PennyMac Holdings' $485,361 mortgage on the property to $107,200 - representing her 50% property interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $214,400 and the value of her 50% interest in the property is $107,200. Docket 78 at 4.

First, the court will not permit the debtor to strip down the creditor's claim to the value of her 50% interest in the property, given that the debtor was the

original and sole borrower on the loan, owned the entire property when she obtained the loan, and granted a security interest to the creditor in the entire property.

The debtor obtained the loan secured by the property in August 2007. POC 1 at 25, 29. She is the sole grantor and trustor under the deed of trust securing the loan, also dated August 2007. POC 1 at 9, 22. This means that the debtor was the sole owner of the property when she obtained the loan and granted a deed of trust to secure it.

Sometime before filing this case on December 6, 2014, the debtor transferred a 50% interest in the property to another person, a non-debtor.

The motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

The court will not permit the debtor to reduce her liability on the loan by transferring partial interest in the property and then seeking to strip down the secured claim only to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, however, the debtor is the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property," as well as to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property.

The debtor transferred a partial interest in the property pre-petition to a non-debtor. There is no evidence that the creditor consented to that transfer.

Nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

Relief under section 506(a)(1) is limited to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction— (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section 506(a)(1) because it requires the valuation of a non-debtor's interest in the property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the

debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive and it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a 50% interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

The court does not reach the merits of the debtor's valuation of the property.

20. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-3
VS. BAYVIEW LOAN SERVICING, L.L.C. — 3-19-15 [80]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Roseville, California, in an effort to strip down Bayview Loan Servicing's $408,153 first mortgage on the property to $91,472 - representing her 50% interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $182,944 and the value of her 50% interest in the property is $91,472. Docket 82 at 4.

First, the court will not permit the debtor to strip down the creditor's claim to the value of her 50% interest in the property, given that the debtor was the original and sole borrower on the loan, owned the entire property when she obtained the loan, and granted a security interest to the creditor in the entire property.

The debtor obtained the loan secured by the property in September 2005. She is the sole grantor and trustor under the deed of trust securing the loan, also dated September 2005. This means that the debtor was the sole owner of the property when she obtained the loan and granted a deed of trust to secure it.

Sometime before filing this case on December 6, 2014, the debtor transferred a 50% interest in the property to another person, a non-debtor.

The motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

The court will not permit the debtor to reduce her liability on the loan by transferring partial interest in the property and then seeking to strip down the secured claim only to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

Here, however, the debtor is the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property," as well as to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property.

The debtor transferred a partial interest in the property pre-petition to a non-debtor. There is no evidence that the creditor consented to that transfer.

Nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

Relief under section 506(a)(1) is limited to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction— (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section 506(a)(1) because it requires the valuation of a non-debtor's interest in the

property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive - it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a 50% interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

Finally, the motion will be denied because the court rejects the debtor's valuation of the property.

The debtor's valuation of the property in this motion ($182,944) is substantially lower from her valuation under the penalty of perjury in Schedules A & D ($225,650).

More, the debtor's valuation is internally inconsistent and it is a liquidation value for the property. The debtor discounted the value of the property by $79,500 due to it being "foreclosure imminent." Docket 82 at 3. Yet, she states that her valuation is not a liquidation value. Id. By discounting the property for being "foreclosure imminent," the debtor is proffering a liquidation value. When a property is labeled as "foreclosure imminent," the price is decreased in order for the property to be sold "as is" and in less time than what is needed to market a property for which there is no time pressure for sale. This is precisely what liquidation valuations are based upon.

The debtor's valuation is based on a decreased marketing price, on an "as is" sale due to many needed repairs, and on a decreased marketing period due to anticipated imminent foreclosure, given that Bayview obtained relief from stay as to the property on March 9, 2015. Docket 82 at 2-4; Docket 73.

21. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-4
VS. OCWEN LOAN SERVICING, L.L.C. — 3-19-15 [84]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her one-third interest in a real property in Olivehurst, California, in an effort to strip down Ocwen Loan Servicing's $251,008 first mortgage on the property to $32,158.33 - representing her one third property interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $96,475 and the value of her one-third interest in the property is $32,158.33. Docket 86 at 4.

First, the motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

On the other hand, the court will not permit the debtor to strip down the creditor's claim to the value of her one-third interest in the property, when the debtor appears - as in the cases concerning the other two properties partially owned by the debtor - to have owned the entire property when she obtained the loan and granted a deed of trust to secure it.

The court will not permit the debtor to reduce her liability on the loan by transferring a partial interest in the property and then seeking to strip down the secured claim to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, however, the debtor is not only asking the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property."

In addition to that relief, the debtor is asking the court to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property, as she did when she incurred the claim secured by the property and when she pledged all 100% interest in the property as collateral for the claim.

The debtor transferred a partial interest in the property pre-petition to a non-debtor, with no evidence of consent from the creditor.

However, nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

The relief of section 506(a)(1) is limited merely to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section 506(a)(1) because it requires the valuation of a non-debtor's interest in the

property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive - it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a one-third interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

Finally, the motion will be denied because the court rejects the debtor's valuation of the property.

The debtor's valuation of the property decreases its value by 21% because she labels the property as "foreclosure imminent."

The court disagrees. The debtor is in a reorganization bankruptcy case, protected by the automatic stay since December 6, 2014, and Ocwen has not obtained relief from stay to foreclose on the property. The property is not "foreclosure imminent" and the corresponding decrease in value is unwarranted.

22. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL 3-19-15 [88]
JHH-5
VS. CHASE BANK

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Roseville, California, in an effort to strip off JPMorgan Chase Bank's $95,604 second mortgage on the property to $0.00 - representing her 50% interest, after accounting for the first mortgage on the property - and treat it as a wholly unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $182,944 and the value of her 50% interest in the property is $91,472. The first mortgage on the property, held by Bayview Loan Servicing, L.L.C., is $408,153.

The motion will be denied for the reasons stated in the court's ruling denying the debtor's similar motion to strip down Bayview's first mortgage on the property (DCN JHH-3), also being heard on this calendar. That ruling is incorporated here by reference.

23. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL 3-19-15 [92]
JHH-6
VS. OCWEN LOAN SERVICING, L.L.C.

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her one-third interest in a real property in Olivehurst, California, in an effort to strip off Ocwen Loan Servicing's $42,555 second mortgage on the property to $0.00 - representing her one-third interest, after accounting the first mortgage on the property - and treat it as a wholly unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $96,475 and the value of her one-third interest in the property is $32,158.33. The first mortgage on the property, held also by Ocwen, is $251,008.

The motion will be denied for the reasons stated in the court's ruling denying the debtor's similar motion to strip down Ocwen's first mortgage on the property (DCN JHH-4), also being heard on this calendar. That ruling is incorporated here by reference.

THE FINAL RULINGS BEGIN HERE

24. 09-43509-A-7 RENOLFO/SOCORRO NAVARRO — MOTION TO AVOID JUDICIAL LIEN
BMV-3 — 3-16-15 [39]
VS. LYON FINANCIAL SERVICES, INC.

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 Lyon Financial Services, Inc. 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 44.

Also, while the debtor served Lyon's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 44.

25. 14-29112-A-7 ALVIN CHANDRA — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 3-18-15 [55]
PENNYMAC HOLDINGS, L.L.C. VS.

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

The motion will be granted.

The movant, Pennymac Holdings, L.L.C., seeks relief from the automatic stay as to a real property in Fairfield, California.

Although a prior bankruptcy case that was dismissed was pending within one year of the filing of this case, the court entered an order extending the automatic stay in this case. Docket 20.

The property has a value of $543,000 and it is encumbered by claims totaling approximately $840,422. The movant's deed is the only mortgage against the property, securing a claim for $830,423.

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.

26. 15-20713-A-7 ASHLEY HARRISON
PD-1
FIRST TECH FEDERAL CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-10-15 [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, First Tech Credit Union, seeks relief from the automatic stay with respect to a 2011 Hyundai Sonata 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 January 30, 2015 and a meeting of creditors was first convened on March 11, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 1. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by

the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. 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 1, 2015, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on March 11, 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 1, 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.

27. 14-32118-A-7 MARIETTA REYES — MOTION TO AVOID JUDICIAL LIEN
AJJ-1
VS. KELKRIS ASSOCIATES, INC. — 3-12-15 [28]

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 Kelkris Associates, Inc. for the sum of $495,613.74 on July 5, 2013. The abstract of judgment was recorded with Sacramento County on January 29, 2014. That lien attached to the debtor's residential real property in Antelope, 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 $338,538 as of the petition date. Dockets 30 & 1. The unavoidable liens totaled $268,975.11 on that same date, consisting of a single mortgage in favor of Select Portfolio Servicing. Dockets 30 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 30 & 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).

28. 15-21120-A-7 LINDA PATRUS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-20-15 [10]
BANK OF AMERICA, N.A. VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $240,000 and it is encumbered by claims totaling approximately $285,368. The movant's deed is in first priority position and secures a claim of approximately $249,368.

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.

29. 11-41338-A-7 ERNESTO CABALLERO — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-3 — 3-16-15 [132]

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 $2,804.50 in fees and $129.37 in expenses, for a total of $2,933.87. This motion covers the period from June 1, 2013 through February 10, 2015. The court approved the movant's employment as the trustee's attorney on June 9, 2013. In performing its services, the movant charged hourly rates of $175, $195, $275, and $400.

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) assisting the estate with the sale of a real property, (2) preparing, filing and prosecuting a motion to sell, and (3) preparing and filing employment and compensation motions.

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

30. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN
SLE-5 — 4-6-15 [56]
VS. CAPITAL ONE BANK

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 solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer or Manager." Docket 60. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

31. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN
SLE-6
VS. VION HOLDINGS, L.L.C. — 4-6-15 [61]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing for the motion violates Local Bankruptcy Rule 9014-1(f)(2), which states that when less than 28 days' notice has been given of the hearing on a motion, written opposition is not required to be filed and served. Instead, opposition may be made at the hearing.

While the instant motion was filed and served on April 6, 2015, only 14 days prior to the April 20, 2015 hearing, the notice of hearing for the subject motion requires written opposition to be filed and served "no less than 7 days before the date of the hearing on this motion." Docket 62. This violates Local Bankruptcy Rule 9014-1(f)(2). Accordingly, the motion will be dismissed.

32. 09-32444-A-7 DOUGLAS/CARLA CARR — MOTION TO RECONSIDER
TGC-2 — 4-2-15 [36]

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. That is, there is no evidence to support the apparent assertion that the failure to file timely opposition to the underlying motion was due to excusable neglect or mistake. The failure to include evidence with the motion 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)."

33. 14-32147-A-7 THOMAS/CHERYL BENNETT — MOTION TO AVOID JUDICIAL LIEN
AFL-1
VS. YELLOWSTONE CAPITAL WEST, L.L.C. AND PACE SUPPLY CORP. — 3-17-15 [25]

Final Ruling: The motion will be dismissed without prejudice.

A judgment was entered against Debtor Thomas Bennett in favor of Pace Supply Corp. for the sum of $151,382.68 on June 12, 2014. The abstract of judgment

was recorded with Placer County on July 15, 2014. That lien attached to the debtor's residential real property in Roseville, California.

A judgment was entered against Debtor Thomas Bennett in favor of Yellowstone Capital West L.L.C. for the sum of $76,394.72 on June 6, 2014. The abstract of judgment was recorded with Placer County on July 18, 2014. That lien attached to the debtor's residential real property in Roseville, California.

The debtors are seeking to avoid both judicial liens, in their entirety, against the property.

The motion claims that the value of the property is $204,000, it is encumbered by a single mortgage in favor of Safe Credit Union for $75,958.27, and the debtors have exempted $100,000 in the property.

Yellowstone Capital has filed opposition to the motion, challenging the priority of the judicial lien of Pace. Pace has not filed any response to the motion.

The debtors have filed a reply, changing their property valuation to $220,000 and the amount of the unavoidable mortgage encumbrance to $70,714.28. Docket 50 at 3.

Despite the foregoing, the motion will be dismissed without prejudice because the debtors have served neither Pace, nor Yellowstone Capital. See Fed. R. Bankr. P. 7004(b)(3) (requiring service "[u]pon 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 notice served on Pace and Yellowstone Capital is not even addressed to these entities. Docket 30 at 2. And, while the debtors served their attorneys, unless they agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Finally, although Yellowstone Capital has filed a response to the motion, waiving the right to challenge service of the motion, Pace has not filed a response to the motion. Given the lack of service on Pace, the motion will be dismissed.

34. 13-26551-A-7 MICHAEL HOLT
HCS-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
3-20-15 [209]

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.

Herum\Crabtree\Suntag (previously in this case The Suntag Law Firm), attorney for the trustee, has filed its second and final motion for approval of compensation.

The requested compensation consists of $14,281.50 in fees and $1,035.41 in expenses, for a total of $15,316.91. This motion covers the period from November 11, 2013 through the present. The court approved the movant's employment as the trustee's attorney in the name The Suntag Law Firm on June 3, 2013 and in the name of Herum\Crabtree\Suntag on February 13, 2014. The court also granted an amended motion for approval of employment on August 19, 2014. In performing its services, the movant charged hourly rates of $225, $275, $295 and $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing claims and providing the trustee with advice about their merits, (2) assisting the trustee with the consummation of the sale of the Ripon property, (3) researching issues pertaining to the debtor's exemption claim in the property, (4) preparing, filing and prosecuting an exemption objection, (5) communicating with a creditor about the merits of the debtor's exemption, (6) negotiating settlement with the debtor over the exemption objection, (7) preparing compromise and motion to approve compromise, (8) obtaining court approval of settlement, (9) reviewing the basis for the $1.5 million unsecured claim of Jeffrey Garcia, (10) negotiating reduction of the claim with Jeffrey Garcia, (11) reviewing and negotiating substantial reduction of the unsecured claim of Janet Holt, and (12) preparing and filing compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved. The prior compensation award will be ratified on final basis.

35. 14-29161-A-7 RICHARD/HWA STOWERS — MOTION FOR
MET-1 — RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. — 3-24-15 [51]

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

36. 14-25973-A-7 ROBIN BUCKMAN — OBJECTION TO CLAIM
LGB-1
VS. DISCOVER BANK — 3-6-15 [22]

Final Ruling: The objection will be dismissed without prejudice because it was not served on the respondent creditor, Discover 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 solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer or Managing Agent." Docket 60. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

37. 14-27980-A-7 GKUBI SMART — MOTION TO EXTEND DEADLINE
HSM-6
2-26-15 [114]

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

The motion will be granted.

The trustee requests an 56-day extension, from February 27, 2015 to April 24, 2015, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was February 27, 2015. The motion was filed on February 26, 2015. Thus, the motion complies with the temporal requirements of the rule.

The trustee has noticed inconsistencies and omissions in documents the debtor has filed with the court. Specifically, the debtor has not listed his anticipated tax refund of $5,000 on Schedule B. Also, after several times stating under the penalty of perjury that he does not own a real property, including in his schedules and in an application for waiver of the filing fee, the debtor filed Amended Schedules A and D, listing a real property with what appears to be over $100,000 in equity.

More, the debtor has just admitted that his basis for a homestead exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3) has no foundation, as his spouse's disability does not qualify under the statute. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to April 24, 2015.

38. 14-27980-A-7 GKUBI SMART — MOTION TO EXTEND TIME 3-5-15 [118]
HSM-7

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

The motion will be granted.

The trustee asks for a 60-day extension, from March 6, 2015 to May 5, 2015, of the deadline for objecting to the debtor's December 5 exemptions in his Amended Schedule C filed on that date.

On February 19, 2015, the court entered an order extending by 60 days, from January 4, 2015 to March 6, 2015, the deadline for objections to the debtor's same December 5 exemptions. Docket 113.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

This motion is timely as it was filed on March 5, 2015, one day before the last-ordered deadline for objections to the debtor's December 5 exemptions.

The trustee needs additional time to investigate the debtor's financial affairs, as there appear to be inaccuracies and/or omissions in the petition documents.

For instance, although the debtor listed no real property interest in his original Schedule A and his application for waiver of the chapter 7 filing fee, both filed on August 5, 2014, after his waiver application was granted, the debtor filed an Amended Schedule A on August 25, 2014, listing interest in a real property with a value of $300,000. Dockets 1, 5, 14. The debtor's Amended Schedule A filed on December 5, 2014 further changes his interest in the property. Now, the value of the property is approximately $373,000,

leaving approximately $136,000 of equity after taking into account the single mortgage against the property for $237,032. Dockets 61 & 64. The trustee also does not have information of the debtor's basis for claiming a $135,967 exemption in the property.

The exemptions filed on August 5, 2014 were pursuant to Cal. Civ. Proc. Code § 703.140, whereas the exemptions filed on December 5, 2014 are asserted pursuant to Cal. Civ. Proc. Code § 704.

The latest twist in the case is that the debtor has admitted to the trustee that his basis for a homestead exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3) has no foundation, as his spouse's disability does not qualify under the statute. Docket 120. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

The foregoing is cause for the requested extension. The deadline for objecting to the debtor's December 5, 2014 exemptions will be extended to May 5, 2015.

39. 13-28491-A-7 JAMES ENGLISH — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
TGM-5 — 3-31-15 [129]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(6), which requires at least 21 days' notice of the hearing on compensation motions. This motion was filed and served only 20 days prior to the hearing, on March 31, 2015. Dockets 129 & 134.

40. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HSM-10 — 3-17-15 [190]

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

The motion will be granted.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $60,420 in fees (reduced from $70,420) and $1,245.25 in expenses, for a total of $61,665.25. This motion covers the period from January 26, 2013 through the present. The court approved the movant's employment as the trustee's attorney on February 6, 2013. In performing its services, the movant charged hourly rates of $295, $300, $380, and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and

"reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) reviewing and analyzing petition documents and estate assets,

(2) communicating with the debtor's counsel about discrepancies in the petition documents,

(3) reviewing and analyzing claims secured by estate assets,

(4) assessing and resolving cash collateral and cross-collateralization issues,

(5) defeating requests for the turnover of rents,

(6) evaluating the debtor's elder care home business, conducted at multiple properties,

(7) reviewing information pertaining to the debtor's real properties (values, occupancy status, etc.),

(8) reviewing exemption claims and advising the trustee about objections,

(9) preparing, filing and prosecuting motion to extend time for discharge objections,

(10) evaluating estate asset abandonment issues,

(11) reviewing stay relief motions,

(12) analyzing the debtor's pre-petition transfer of assets and negotiating with the debtor over the estate's interest in the transfers,

(13) communicating with the estate's CPA in considering various tax consequences from liquidation of assets,

(14) prosecuting avoidance claims to recover estate assets,

(15) negotiating liquidation of a real property with a tenant at the property,

(16) preparing, filing and prosecuting multiple motions to sell,

(17) assisting the trustee with the consummation of all real property sales, each of which was more complicated than normal,

(18) investigating and pursuing an insurance claim on a real property paid to the debtor, including preparing discovery requests, and

(19) preparing and filing employment and compensation motions for the various professionals of the estate.

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.