B **UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 21, 2014 at 10:00 a.m.

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

2, 3, 5, 6, 8, 13, 22

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

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

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

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 19, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 5, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 12, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

Matters called beginning at 10:00 a.m.

1. 12-24710-A-7 NONATO/JOYCE GAOIRAN — MOTION TO SELL
HCS-2 — 3-31-14 [64]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is for $44,563.27 the estate's interest in a condominium in Mandaluyong City, Philippines to Mei Chang Choy and Solon Venus. The property is subject to an exemption claim of $2,166. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and for authority to pay the 5% real estate commission to Phyllis Cruz of Century Properties.

The property is subject to two liens, $116.11 in unpaid taxes and $864.17 in condominium dues, which will be paid from escrow.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h). The court will also approve payment of the real estate commission.

2. 11-49912-A-7 GINA FLAHARTY — MOTION FOR APPROVAL OF LITIGATION AGREEMENT
DNL-8 — 3-31-14 [133]

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

The motion will be granted.

The trustee requests approval of a settlement agreement among the estate, the debtor and Travel Med, Inc., resolving who will manage and control the prosecution of legal malpractice claims against the former counsel of the debtor and Travel Med in franchise litigation against Passport Health, Inc.

The debtor was and trustee is now the sole equity holder of Travel Med, a nursing corporation that is no longer operating. Both the debtor and Travel Med were sued by Passport, resulting in a large judgment against both the debtor and Travel Med.

Under the terms of the compromise, the trustee shall have the authority to prosecute the malpractice claims on behalf of both the estate and Travel Med, including the making of tactical decisions, decisions about settlement, and decisions about dismissal. Any proceeds from the malpractice litigation will be divided equally between the estate and Travel Med. Travel Med's 50% share

shall be distributed by the trustee as follows: 5% to the debtor on account of a management fee owed by Travel Med and 95% to Travel Med's creditors until their claims are paid in full, with the balance, if any, to be returned to the trustee as a "return of capital." Also, Travel Med's articles will be amended to change its status from a professional corporation to a general corporation, eliminating the ownership and management limitations to licensed medical professionals. There shall be a release of claims between the trustee and the debtor, on one hand, and Travel Med, on the other hand.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the settlement permits the continued prosecution of the malpractice claims, given that the settlement resolves the practical problem of separating the prosecution of the estate's claims from the prosecution of Travel Med's claims, given that some of the claims against Travel Med are simultaneously claims against the debtor's bankruptcy estate as well, given that the bankruptcy estate will now be able to claim its equity interest in Travel Med unimpeded, and given that the estate will receive any balance from the settlement proceeds, after payment of the claims against Travel Med, the settlement is equitable and fair.

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

3. 14-21713-A-7 MARY TAYLOR
CJO-1
GREEN TREE SERVICING L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-2-14 [10]

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, Green Tree Servicing, seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $173,000

and it is encumbered by claims totaling approximately $258,562. The movant's deed is in first priority position and secures a claim of approximately $231,563.

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

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

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

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

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

4. 14-22222-A-7 BRANDON BARE — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 3-24-14 [14]
GNANASUNDAR KRISHNASWAMI VS.

Tentative Ruling: The motion will be granted.

The movant, Gnanasundar Krishnaswami, seeks relief from the automatic stay as to real property in Sacramento, California. The movant is the legal owner of the property and the debtor only had leased the property. The debtor defaulted under the lease agreement and the movant served the debtor with a three-day notice to quit on January 15, 2014. On February 6, 2014, the movant instituted an unlawful detainer action against the debtor. The debtor filed the instant case on March 5, 2014.

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

The debtor opposes the motion, arguing that pre-petition unpaid rent will be discharged while the movant is adequately protected for unpaid post-petition rent (March and April 2014). The debtor plans to make the May 2014 rental payment and then vacate the property.

This is a liquidation proceeding and the debtor has no interest in the property as the movant is the legal owner of it. And, even though the debtor was a tenant at the property, he has defaulted under the lease agreement with the movant. The fact that he may be willing to pay post-petition rent does not undo the $3,990 pre-bankruptcy rent default, nor does his willingness to pay

future rent revive the tenancy which expired upon the expiration of the three-day notice served on the debtor before the bankruptcy case was filed on January 15, 2014. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

The debtor's default under the lease agreement and the termination of the tenancy is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

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

As the court does not have information about the status of the unlawful detainer proceeding, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

5. 14-20225-A-7 LAVERN/MARLENE HELWIG — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBB-1 — 3-20-14 [16]
BANK OF AMERICA, N.A. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2006 Coachmen Epic RV.

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 10, 2014 and a meeting of creditors was first convened on February 19, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than February 9. The debtor filed a statement of intention on the petition date but without listing the subject vehicle.

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

Here, although the debtor filed a statement of intention on the petition date, the debtor did not list the vehicle in the statement. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on February 9, 2014, 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 February 19, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on February 9, 2014.

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.

6. 14-23227-A-7 GREGORY ZUCCARO — MOTION TO COMPEL ABANDONMENT 4-7-14 [9]
FF-1

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his Sterling Industries cabinetry business.

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

According to the motion, the business assets include without limitation tools of trade, receivables, equipment, office equipment, appliances, inventory, as listed to the attachment to item 13 of Schedule B, which is part of this motion. The assets have a value of $16,335 and are subject to a $60,000 lien held by the Bank of the West. Also, the assets are subject to an exemption

claim in the amount of $23,625, in Schedule C. Given the secured claim and exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

7. 14-21434-A-7 CLINT BOYD — MOTION TO DISMISS CASE 3-13-14 [11]
SKS-1

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

The trustee moves for dismissal because the debtor did not attend the initial meeting of creditors held on March 12, 2014.

The debtor responds that the meeting was not attended "due to inadvertence [sic]." The debtor promises to attend the continued meeting on April 18, 2014.

The debtor's explanation about why he did not attend the meeting on March 12 is inadequate. The debtor does not give any details about what prevented him from attending the March 12 meeting. The court does not understand what the debtor means by "inadvertence".

More, the debtor's opposition is not supported by any admissible evidence, such as a declaration. This is especially important because the debtor is represented by counsel, Steele Lanphier. The court is not satisfied that there was excusable neglect on the part of the debtor in not attending the meeting of creditors. Apparently, the debtor simply forgot to attend. This is not good cause.

The debtor's 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).

8. 14-22641-A-7 JOYCE NAKASHIMA — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-2-14 [11]
MRG-1
CAPITAL ONE, N.A. VS.

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

The motion will be granted.

The movant, Capital One, N.A., seeks relief from the automatic stay as to real property in meadow Vista, California. The property has a value of $120,000 and it is encumbered by claims totaling approximately $406,466. The movant's deed is the only deed against the property, securing a claim of approximately $405,066.

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.

9. 05-36844-A-7 STACEY STREETER
DNL-2

MOTION TO
RATIFY CONFIDENTIAL SETTLEMENT AND
AUTHORIZE DISBURSEMENTS
3-17-14 [30]

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

The trustee requests approval of a settlement agreement among the estate, the debtor and a confidential class action defendant, resolving the debtor's personal injury claims against that defendant. The movant also asks for authorization payments of fees and costs to the plaintiff class counsel and the settlement administrator.

The settlement will bring about a surplus estate. The gross settlement amount is $206,878.31. The debtor's exemption is $37,775, the fees for the class counsel, Chaffin Luhana, L.L.P., are $67,148.11, the expenses for the class counsel are $5,413.84, the fees for the settlement administrator, Garreston Resolution Group, are $2,175.46, the expenses for GRG are $167.09, and $62,063.49 will be held back by the defendant to satisfy eventual medical liens. The settlement will net $32,135.32 for the estate, whereas the unsecured claims total approximately $13,000.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the settlement will generate sufficient funds to pay all unsecured claims in full and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

However, the court will not approve payment of the fees and costs to the plaintiff class counsel and the settlement administrator as the court has not approved their employment and the motion does not brief the nunc pro tunc employment standard. See In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988) & Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995).

More, the court does not have any admissible evidence about the nature and extent of the work performed by the class counsel and the settlement administrator. There are no declarations and time records from those professionals. The court cannot determine to what extent, if any, the services provided by them were reasonable and necessary. This part of the motion will be denied.

10. 13-33744-A-7 GERASSIMOS VERTEOURI — MOTION TO SELL
PA-3 — 3-24-14 [52]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell to the debtor for $102,576 ($70,000 in cash and $32,576 in claimed exemptions) the estate's interest in the following assets, subject to any claims, liens or other encumbrances:

(1) a $7,000 receivable from the Henny Penny Family Restaurant, a partnership (subject to an exemption claim in the amount of $7,000); and

(2) personal injury claims (subject to an exemption claim in the amount of $25,576).

As part of this sale, the exemption claims will be deemed satisfied. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

11. 10-42450-A-7 ROBERT MATTHEWS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
MJO-4 — 3-18-14 [132]

Tentative Ruling: The motion will be granted in part.

Macdonald Fernandez, attorney for the trustee, has filed its first and final

motion for approval of compensation. The requested compensation consists of $18,532.50 in fees, reduced from $20,532.50, and $1,008.96 in expenses, for a total of $19,541.46. This motion covers the period from November 1, 2010 through March 18, 2014. The court approved the movant's employment as the trustee's attorney on October 5, 2011. In performing its services, the movant charged hourly rates of $150, $250, and $350.

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 personal property, (2) assisting the estate with the recovery of property from a buyer, including the filing of a motion and an adversary proceeding and negotiating a settlement with the buyer, (3) preparing and prosecuting a motion to sell and compromise, (4) analyzing claims against the estate, (5) investigating the debtor's affairs for the administration of assets, (6) advising the trustee about the general administration of the estate, and (7) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved, with one exception. The exception is the services provided by the movant prior to September 5, 2011, 30 days prior to the approval of the movant's employment. The court will not award compensation to the movant for services provided during a period of time when the movant's employment had not been approved by the court.

In addition, while the court is cognizant that the movant has voluntarily reduced its fees by $2,000, the compensation for services rendered prior to September 5, 2011 exceeds that amount. The court has calculated the compensation sought for services rendered prior to September 5, 2011 to be $2,830. The court will deny the motion to the extent it is seeking compensation for services rendered prior to September 5, 2011.

On the other hand, the court is willing to credit the $2,000 voluntary reduction by the movant to the pre-September 5, 2011 compensation and reduce the overall fees only by $830.

12. 14-20456-A-7 EULANDA MERRIWEATHER — TRUSTEE'S MOTION TO DISMISS CASE
SKS-1 — 2-27-14 [16]

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

The trustee moves for dismissal because the debtor did not attend the initial meeting of creditors, held on February 26, 2014.

The debtor responds that she did not receive the notice of chapter 7 bankruptcy case.

The court is not persuaded that the debtor did not receive the notice of case. The notice was served on the debtor at the address provided by the debtor to the court, PO Box 582833 Sacramento, CA 95758. Docket 14.

Moreover, this is the debtor's second bankruptcy case since September 23, 2013. The prior bankruptcy case, Case No. 13-32390-D-7, was filed on September 23, 2013 and was dismissed on December 23, 2013, for the same reason the instant motion was brought, *i.e.*, failure to attend the initial meeting of creditors,

held on October 23, 2013.

Given the foregoing, the court is not persuaded by the debtor that she did not receive the notice of the instant case. The debtor's 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).

13. 14-21756-A-7 SCOTT MACK
CJO-1
SUNTRUST BANK VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-2-14 [14]

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

The motion will be granted.

The movant, Suntrust Bank, seeks relief from the automatic stay as to real property in Mammoth Lakes, California. The property has a value of $340,470 and it is encumbered by claims totaling approximately $752,958. The movant's deed is in first priority position and secures a claim of approximately $635,690.

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.

14. 14-22956-A-7 RONNESHA WESTRY — ORDER TO SHOW CAUSE 3-25-14 [26]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file the statement of current monthly income and means test calculation, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, as required by Bankruptcy Rule 1007(b)(1), ©, 11 U.S.C. § 521(a) and 11 U.S.C. § 707(b)(2)©. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

15. 14-22962-A-7 AMAN ULLAH — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-7-14 [15]
JWC-1
TRANSPORT FUNDING, L.L.C. VS.

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

The movant, Transport Funding, L.L.C., seeks relief from the automatic stay with respect to three Volvo semi trucks, which were surrendered to the movant pre-petition. Each of the vehicles is subject to a separate financing agreement between the debtor and the movant.

The movant has produced evidence that the vehicle subject to an agreement dated August 24, 2011 has a value of $25,250 and the movant's secured claim is approximately $14,483, meaning there is over $10,000 of equity in the vehicle.

The movant has produced evidence that the vehicle (VIN last four digits 1219) subject to an agreement dated April 6, 2012 has a value of $33,750 and the movant's secured claim is approximately $42,805, meaning there is no equity in the vehicle.

The movant has produced evidence that the vehicle (VIN last four digits 1124) subject to an agreement dated April 6, 2012 has a value of $33,750 and the movant's secured claim is approximately $45,227, meaning there is no equity in the vehicle.

The court concludes that there is no equity in the vehicles subject to the April 6, 2012 agreements. No evidence exists that those vehicles are necessary to a reorganization or that the trustee can administer them for the benefit of the creditors.

Accordingly, the motion will be granted as to the two vehicles subject to the April 6 agreements pursuant to 11 U.S.C. § 362(d)(2), to permit the movant to dispose of the vehicles pursuant to applicable law and to use the proceeds from their disposition to satisfy its corresponding claims. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the two vehicles.

As to the vehicle subject to the August 24, 2011 agreement, the motion will be

denied. According to the movant, there is over $10,000 of equity in that vehicle, meaning that relief under 11 U.S.C. § 362(d)(2) is not proper. Relief under 11 U.S.C. § 362(d)(1) is not proper either because the court does not have evidence from the movant that the equity in that vehicle will not adequately protect the movant's $14,483 interest in the vehicle, at least until the trustee decides whether she will be administering the vehicle. The initial meeting of creditors in this case is set for April 30, 2014. The motion will be denied with respect to this vehicle.

Finally, the court notes that the debtor has not filed a statement of intention with respect to the subject vehicles. The deadline for the statement expires April 23, 2014 or 30 days after the March 24, 2014 petition date. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

16. 14-22870-A-7 JANET DERKOWSKI — MOTION TO APPOINT GUARDIAN AD LITEM 3-24-14 [7]
DAO-1

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

The motion will be granted.

The debtor is asking that the court appoint the debtor's husband, William Derkowski as guardian ad litem for his wife and debtor, Janet Derkowski, under Fed. R. Bankr. P. 1004.1.

Rule 1004.1 provides that "the court shall appoint a guardian ad litem for . . . incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the . . . incompetent debtor." "If an . . . incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the . . . incompetent person. An . . . incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem." Fed. R. Bankr. P. 1004.1. In determining whether a person is incompetent, the court turns to state law.

Cal. Prob Code § 811 provides that "(a) [a] determination that a person is of unsound mind and lacks the capacity to make a decision or do a certain act ... shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:
(A) Level of arousal or consciousness.
(B) Orientation to time, place, person, and situation.
© Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.
(B) Ability to understand or communicate with others, either verbally or otherwise.
© Recognition of familiar objects and familiar persons.
(D) Ability to understand and appreciate quantities.
(E) Ability to reason using abstract concepts.
(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
(A) Severely disorganized thinking.
(B) Hallucinations.
© Delusions.
(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question."

This bankruptcy case was filed on March 21, 2014 by William Derkowski as attorney in fact on behalf of the debtor. Sometime pre-petition the debtor suffered a stroke. As a result, Mr. Derkowski became her attorney in fact.

The supporting declaration of Mr. Derkowski states that after her stroke the debtor has "only minimal ability to speak, or to respond, or to otherwise communicate, to those not familiar with her and her current condition, in a normal way with definitive clarity of purpose or intention." He further states that "[s]he is incapable of making, or at the very least asserting, any significant decision with respect to her financial affairs[,] [s]he has been confined to the Auburn Oaks Care Center . . . for several months now, and cannot travel." Docket 9 ¶ 6.

The court has evidence that the debtor's stroke has brought her to a state of unsound mind, lack of capacity to make decisions, and lack of ability to communicate. The court concludes then that the debtor is incompetent for purposes of Fed. R. Bankr. P. 1004.1.

The court also concludes that Mr. Derkowski, as the debtor's spouse, who seemingly is familiar with the debtor's financial condition, would be best suited to act on the debtor's behalf during the bankruptcy. Accordingly, the court will appoint Mr. Derkowski to serve as guardian ad litem for the debtor during the pendency of this bankruptcy case. No other relief will be granted.

17. 12-40479-A-7 JOSEPH/GINA PARKER — ORDER TO SHOW CAUSE 4-1-14 [76]

Tentative Ruling: The case will be dismissed.

The debtors filed a notice of conversion to chapter 7 on March 18, 2014, but did not pay the $25 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

18. 09-31380-A-7 ANITA FORRY — MOTION TO AVOID JUDICIAL LIEN
BSJ-2
VS. INTERNAL REVENUE SERVICE — 4-7-14 [37]

Tentative Ruling: The motion will be denied.

A notice of federal tax lien for $3,202.48 was recorded in Placer County on March 30, 2009 against the debtor's real property in Lincoln, California by the Internal Revenue Service. The debtor is asking the court to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A), which provides that:

"Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is— (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5)."

11 U.S.C. § 522(f)(1)(A) applies only to judicial liens, *i.e.*, liens that are based on the entry of a judgment against the debtor. The court cannot avoid the subject lien because it has no evidence that the lien is based on a judgment entered against the debtor.

On the contrary, the notice of federal tax lien states that the lien is based on the debtor's liability under a statute, sections 6321, 6322, and 6323 of the Internal Revenue Code. Ex. B to Docket 41. In other words, the subject lien is a statutory lien and not a judgment lien. Statutory liens are not avoidable under 11 U.S.C. § 522(f)(1)(A). Accordingly, this motion will be denied.

19. 09-31380-A-7 ANITA FORRY — MOTION TO AVOID JUDICIAL LIEN
BSJ-3
VS. INTERNAL REVENUE SERVICE — 4-7-14 [42]

Tentative Ruling: The motion will be denied.

A notice of federal tax lien for $32,131.18 was recorded in Placer County on January 5, 2009 against the debtor's real property in Lincoln, California by the Internal Revenue Service. The debtor is asking the court to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A), which provides that:

"Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is— (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5)."

11 U.S.C. § 522(f)(1)(A) applies only to judicial liens, *i.e.*, liens that are based on the entry of a judgment against the debtor. The court cannot avoid the subject lien because it has no evidence that the lien is based on a judgment entered against the debtor.

On the contrary, the notice of federal tax lien states that the lien is based

on the debtor's liability under a statute, sections 6321, 6322, and 6323 of the Internal Revenue Code. Ex. B to Docket 46. In other words, the subject lien is a statutory lien and not a judgment lien. Statutory liens are not avoidable under 11 U.S.C. § 522(f)(1)(A). Accordingly, this motion will be denied.

20. 09-31380-A-7 ANITA FORRY — MOTION TO AVOID JUDICIAL LIEN
BSJ-4
VS. FRANCHISE TAX BOARD — 4-7-14 [47]

Tentative Ruling: The motion will be denied.

A notice of state tax lien for $6,078.65 was recorded in Placer County on May 5, 2009 against the debtor's real property in Lincoln, California by the California Franchise Tax Board. The debtor is asking the court to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A), which provides that:

"Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is— (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5)."

11 U.S.C. § 522(f)(1)(A) applies only to judicial liens, *i.e.*, liens that are based on the entry of a judgment against the debtor. The court cannot avoid the subject lien because it has no evidence that the lien is based on a judgment entered against the debtor.

On the contrary, the notice of lien states that the lien is based on the debtor's liability under a statute, parts 10 or 11 of Division 2 of the California Revenue and Taxation Code. Ex. B to Docket 51. In other words, the subject lien is a statutory lien and not a judgment lien. Statutory liens are not avoidable under 11 U.S.C. § 522(f)(1)(A). Accordingly, this motion will be denied.

21. 09-31380-A-7 ANITA FORRY — MOTION TO AVOID JUDICIAL LIEN
BSJ-5
VS. FRANCHISE TAX BOARD — 4-7-14 [52]

Tentative Ruling: The motion will be denied.

A notice of state tax lien for $2,090.80 was recorded in Placer County on September 2, 2008 against the debtor's real property in Lincoln, California by the California Franchise Tax Board. The debtor is asking the court to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A), which provides that:

"Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is— (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5)."

11 U.S.C. § 522(f)(1)(A) applies only to judicial liens, *i.e.*, liens that are based on the entry of a judgment against the debtor. The court cannot avoid the subject lien because it has no evidence that the lien is based on a judgment entered against the debtor.

On the contrary, the notice of lien states that the lien is based on the debtor's liability under a statute, parts 10 or 11 of Division 2 of the California Revenue and Taxation Code. Ex. B to Docket 56. In other words, the subject lien is a statutory lien and not a judgment lien. Statutory liens are not avoidable under 11 U.S.C. § 522(f)(1)(A). Accordingly, this motion will be denied.

22. 14-22385-A-7 JAVIER PARRA AND GUADALUPE HIGUERA
CJO-1
BANK OF AMERICA, N.A. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
4-3-14 [13]

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, Bank of America, seeks relief from the automatic stay as to real property in Elverta, California. The property has a value of $143,655 and it is encumbered by claims totaling approximately $240,260. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

FINAL RULINGS BEGIN HERE

23. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO
HCS-2 EXTEND TIME
3-17-14 [74]

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

The motion will be granted.

The trustee moves for a 184-day extension, from March 17, 2014 to September 17, 2014, of the time to assume or reject specific executory contracts, as the trustee is selling real property and the subject contracts may affect development rights in the property. The requested extension period coincides with the trustee's listing period for the sale of the property.

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

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

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

"Under the section, the court's ability to extend the 60-day period is limited by a clause which includes three successive terms: 'for cause,' 'within such 60-day period,' and 'fixes.' It is not entirely clear whether the second term-'within such 60-day period'-modifies the term that precedes it or the term that follows it. If we read it as modifying 'fixes', then a bankruptcy court would not under the literal words of the statute have the authority to grant a timely motion to extend after the sixtieth day. That is the interpretation advanced by Long Beach, as well as by some bankruptcy courts in this and other

cases. See In re House of Deals of Broward, Inc., 67 B.R. 23, 24 (Bankr. E.D.N.Y. 1986); In re Coastal Indus., Inc., 58 B.R. 48, 49 (Bankr. D.N.J. 1986); In re Taynton Freight Sys., Inc., 55 B.R. 668, 671 (Bankr. M.D. Pa. 1985). If, however, the 60-day term modifies 'for cause,' then while the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period), there is no express limit on when the bankruptcy court must hear and decide the motion. This more liberal reading of the statute would allow the bankruptcy courts to operate with greater freedom and flexibility. It is the one we adopt."

Southwest Aircraft at 850.

This petition was filed on March 15, 2013. The last day of the deadline under 11 U.S.C. § 365(d)(1) expired on March 17, 2014, pursuant to a prior extension of that deadline in an order entered on March 3, 2014. Docket 70. As this motion was filed on March 17, 2014, it is timely under 11 U.S.C. § 365(d)(1).

While this is the fourth request for extension of the deadline, the prior three requests pertained to all of the debtor's executory contracts, whereas this request pertains solely to seven contract identified in the motion as follows:

(I) Subdivision Improvement Agreement Tracy Gateway Business Park with TG Associates, L.L.C.;

(ii) an agreement regarding storm drain facilities on the Tracy Gateway Project with the City of Tracy;

(iii) a development agreement with the City of Tracy;

(iv) a deferred improvement agreement as to the Tracy Gateway Business Park with the City of Tracy;

(v) a non-potable water supply operations and maintenance agreement for the Tracy Gateway Project with the City of Tracy;

(vi) an allocation of water and wastewater capacities as to the Tracy Gateway Business Park-Phase 1 with TG Associates, L.L.C.; and

(vii) a memorandum of agreement regarding interim drainage for the Tracy Gateway Business Park with the Westside Irrigation District.

The trustee needs additional time to assess the estate's interest in the above executory contracts, especially given that the property as to which the agreements relate is listed for sale. Preserving the contracts is likely to preserve the marketability and value of the real property the trustee is attempting to sell. This is cause for the granting of the requested extension. The deadline will be extended as to the above contracts only, to September 17, 2014. The motion will be granted.

24.	10-44626-A-7 DENISE/JOSEPH CAUDLE MG-2 VS. DISCOVER BANK	MOTION TO AVOID JUDICIAL LIEN 3-14-14 [36]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46

F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against Debtor Joseph Caudle in favor of Discover Bank for the sum of $4,840.80 on December 9, 2009. The abstract of judgment was recorded with Solano County on February 9, 2010. That lien attached to the debtor's residential real property in Vacaville, California (5373 Alonzo Road).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $172,647 as of the date of the petition. The unavoidable liens total $187,976 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Amended Schedule C. Docket 35.

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).

25. 10-44626-A-7 DENISE/JOSEPH CANDLE — MOTION TO AVOID JUDICIAL LIEN
MG-3
VS. KELKRIA ASSOCIATES, INC. — 3-14-14 [42]

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 debtors in favor of Kelkris Associates, Inc. for the sum of $23,700.03 on April 6, 2010. The abstract of judgment was recorded with Solano County on June 1, 2010. That lien attached to the debtors' residential real property residence in Vacaville, California (5373 Alonzo Road).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $172,647 as of the date of the petition. The unavoidable liens total $187,976 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Amended Schedule C. Docket 35.

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).

26. 14-22932-A-7 ALEXANDER/GALINA MOTION TO
MS-1 MIGASHKIN AVOID JUDICIAL LIEN
VS. GCFS, INC. 3-24-14 [5]

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). See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against Debtor Galina Migashkin in favor of GCFS, Inc. for the sum of $15,367.08 on December 20, 2012. The abstract of judgment was recorded with Sacramento County on August 9, 2013. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $422,780 as of the date of the petition. The unavoidable liens total $513,017.91 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C.

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

27. 13-36133-A-7 GEORGE ROWE MOTION FOR
ASW-1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 3-14-14 [14]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real

property in Stockton, California. The property has a value of $179,765 and it is encumbered by claims totaling approximately $207,291. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 6, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

28. 10-36236-A-7 TREVOR GLIDDEN — MOTION TO AVOID JUDICIAL LIEN
WLJ-2
VS. JAMES A. CASEY — 3-17-14 [34]

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 James Casey for the sum of $7,558.60 on October 14, 2009. The abstract of judgment was recorded with Placer County on June 3, 2010. That lien attached to the debtor's one-half interest in a residential real property in Tahoe City, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The debtor owns only a 50% interest in the subject real property. Pursuant to the debtor's Schedule A, his 50% interest has an approximate value of $372,500 as

of the date of the petition. The aggregate value of the property is $745,000. See also Original Schedule D.

The unavoidable liens against the property total $742,581 on the petition date, consisting of a first mortgage for $292,581 in favor of Bank of America and a second mortgage for $450,000 in favor of Gatski Enterprise, L.L.C.. This leaves $2,419 of aggregate equity in the property and the debtor's one-half interest in that equity amounts to $1,209.50. The debtor claimed an exemption for $6,165 pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in that equity. Amended Schedule C, Docket 46.

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 his one-half interest in the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

29. 10-36236-A-7 TREVOR GLIDDEN — MOTION TO AVOID JUDICIAL LIEN
WLJ-3
VS. RIVER CITY BANK
3-17-14 [40]

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

The motion will be granted.

A judgment was entered against the debtor in favor of River City Bank for the sum of $17,237.44 on October 24, 2007. The abstract of judgment was recorded with Placer County on November 20, 2007. That lien attached to the debtor's one-half interest in a residential real property in Tahoe City, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The debtor owns only a 50% interest in the subject real property. Pursuant to the debtor's Schedule A, his 50% interest has an approximate value of $372,500 as of the date of the petition. The aggregate value of the property is $745,000. See also Original Schedule D.

The unavoidable liens against the property total $742,581 on the petition date, consisting of a first mortgage for $292,581 in favor of Bank of America and a second mortgage for $450,000 in favor of Gatski Enterprise, L.L.C. This leaves $2,419 of aggregate equity in the property and the debtor's one-half interest in that equity amounts to $1,209.50. The debtor claimed an exemption for $6,165 pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in that equity. Amended Schedule C, Docket 46.

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 his one-half interest in the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

30. 13-31638-A-7 DONNA DE QUILLETTES — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-7-14 [21]
SANTANDER BANK, N.A. VS.

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

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

The movant, Santander Bank, seeks relief from the automatic stay as to real property in Dixon, California.

Given the entry of the debtor's discharge on December 16, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $215,552 and it is encumbered by claims totaling approximately $366,373.60. The movant's deed is in first priority position and secures a claim of approximately $302,341.

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

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

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

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

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

31. 14-21641-A-7 KARI YOUNG — MOTION TO AVOID JUDICIAL LIEN
MMM-1
VS. GE CAPITAL RETAIL BANK, ET AL — 3-12-14 [11]

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 GE Capital Retail Bank for the sum of $9,456.09 on November 16, 2012. The abstract of judgment was recorded with Yuba County on December 27, 2012. That lien attached to the debtor's residential real property in Plumas Lake, California.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $6,958.06 on September 12, 2013. The abstract of judgment was recorded with Yuba County on November 20, 2013. That lien attached to the debtor's residential real property in Plumas Lake, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $252,000 as of the date of the petition. The unavoidable liens total $232,542 on that same date, consisting of a single mortgage in favor of Village Capital. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,000 in Amended Schedule C. Docket 10.

The respondents hold judicial liens created by the recordation of abstracts 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 liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and their fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

32. 14-20749-A-7 ELFRED/CLAUDIA CORDOVA — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
U.S. BANK, N.A. VS. — 3-13-14 [13]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $244,191 and it is encumbered by claims totaling approximately $319,583. The movant's deed is in first priority position and secures a claim of approximately $219,186.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on March 14, 2014.

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.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not

to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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

33. 14-21862-A-7 ADRIAN DELGADILLO — MOTION TO AVOID JUDICIAL LIEN
WRF-2
VS. CAPITAL ONE BANK (USA), N.A. — 3-31-14 [17]

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "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)."

In addition, the motion was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The motion was not served on the bank by certified mail and the proof of service accompanying the motion indicates that the notice was not addressed to an officer of the bank. It was not addressed to anyone. Docket 19. This violates Fed. R. Bankr. P. 7004(h).

34. 14-21665-A-7 GERMAN OCHOA AND CLAUDIA DIAZ — MOTION TO REDEEM
WRF-2 — 4-3-14 [16]

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "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)."

In addition, the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires 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 debtor served the motion on GM Financial 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."

35. 10-48569-A-7 KEVIN/BONNIE LINCOLN — MOTION TO AVOID JUDICIAL LIEN
DED-3
VS. DONAHUE SCHRIBER REALTY GROUP L.P. — 4-1-14 [35]

Final Ruling: The motion will be dismissed because it does not comply with Fed. R. Bankr. P. 7004(b)(3), which requires 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 debtor served the motion on Donahue Schriber Realty Group, L.P. 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."

In addition, even if the motion had been served correctly, it would have been denied because it contains conflicting information about the amount of the mortgage against the property. The motion states that the sole mortgage on the property is $369,500 and that the value of the property is $375,494, leaving $5,994 of equity in the property.

On the other hand, the schedules attached to the motion reflect conflicting information about the value of the property. Schedules A and C state that the property's value is $375,494, whereas Schedule D states that it is $369,500. The court cannot adjudicate the motion until those inconsistencies have been corrected.

36. 13-34876-A-7 DOUGLAS/LISA BALMAIN — OBJECTION TO EXEMPTIONS AND FOR TURNOVER OF PROPERTY
TAA-1 — 2-12-14 [25]

Final Ruling: The hearing on this motion has been continued to May 19, 2014 at 10:00 a.m. Docket 37.

37. 12-38186-A-7 DANIEL/KELLY SACKHEIM — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1
BANK OF AMERICA, N.A. VS. — 3-20-14 [61]

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

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

The movant, Bank of America, seeks relief from the automatic stay as to real property in Fair Oaks, California.

Given the entry of the debtor's discharge on January 28, 2013, the automatic

stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $295,000 and it is encumbered by claims totaling approximately $370,592. The movant's deed is in first priority position and secures a claim of approximately $267,816.

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

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

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

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the

debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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

38. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-8
VS. A AND A READY MIXED CONCRETE, INC. — 3-3-14 [94]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

39. 14-22097-A-7 JUSTIN ELLIOTT — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
AMERICAN HONDA FINANCE CORP. VS. — 3-17-14 [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 granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2013 Honda Accord. The movant has produced evidence that the vehicle has a value of $23,150 (the value assigned by the debtor in Schedule B is $20,046) and its secured claim is approximately $32,862.

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

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

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

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

40. 14-20399-A-7 ROBIN/TRAVIS PARKER — ORDER TO SHOW CAUSE 3-31-14 [33]

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

This order to show cause was issued because the debtors filed an amended master address list on March 17, 2014 but did not pay the $15 filing fee. However, the debtors paid the fee on April 10, 2014. No prejudice has resulted from the delay.