UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 18, 2015 at 10:00 a.m.

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

1, 2, 3, 4, 5, 9, 11

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 15, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 1, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 8, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 15-20102-A-7 MUKHTIAR TAKHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
DMW-1 — 4-23-15 [55]
GOLD COUNTRY BANK VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Gold Country Bank, seeks relief from the automatic stay with respect to various personal property farm equipment, which secures two loans held by the movant. For specific description of the instant equipment, interested parties should review the motion.

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 7, 2015 and a meeting of creditors was first convened on February 3, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than February 3. The debtor filed a statement of intention on January 21, 2015 (Docket 21), but he did not list the subject personal property in the statement.

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, he did not list the subject property in the statement, failing to state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on February 3, 2015, on the initial meeting of creditors 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.

Therefore, without this motion being filed, the automatic stay terminated on

February 3, 2015.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

2. 12-40820-A-7 DANNIKA BARNETT — MOTION FOR TURNOVER OF PROPERTY
DNL-5 — 4-13-15 [89]

Tentative Ruling: The motion has been resolved by stipulation. Docket 100.

3. 15-23333-A-7 JOYCE LEE — MOTION FOR RELIEF FROM AUTOMATIC STAY
CPG-1 — 5-4-15 [12]
FG SORELLE, L.L.C. VS.

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

The motion will be granted.

The movant, FG Sorelle, L.L.C., seeks relief from the automatic stay as to a real property in Lathrop, California. The movant purchased the property at a pre-petition foreclosure sale, on December 22, 2014. On February 4, 2015, the movant commenced an unlawful detainer proceeding. The debtor filed the instant petition on April 24, 2015.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are 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 fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

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

4. 15-21135-A-7 NETTIE DUYANOVICH — MOTION TO COMPEL ABANDONMENT 4-21-15 [22]
FF-2

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 50% interest in her pool cleaning business, Natural Chemistry Pool Services, dba Best Buy Pool Supply.

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:

- a computer, desk, copy machine, fax machine, inventory described as warehouse utilization products (value of $2,500),

- other inventory (value of $9,804.95),

- pool service equipment (value of $2,054.79).

The debtor has claimed exemptions totaling $9,457.27, covering her 50% interest in the assets.

Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

5. 15-21136-A-7 MATTHEW DUYANOVICH — MOTION TO COMPEL ABANDONMENT 4-21-15 [27]
FF-2

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 50% interest in his pool cleaning business, Natural Chemistry Pool Services, dba Best Buy Pool Supply.

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:

- a computer, desk, copy machine, fax machine, inventory described as warehouse utilization products (value of $2,500),

- other inventory (value of $9,804.95),

- pool service equipment (value of $2,054.79).

The debtor has claimed exemptions totaling $9,457.27, covering his 50% interest in the assets.

Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

6. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO AVOID JUDICIAL LIEN
JB-4
VS. SNIDER LEASING CORP. — 3-20-15 [67]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Larry McCarren (named as James McCarren in the complaint) in favor of Snider Leasing Corp. for the sum of $80,051.11 on April 17, 2012. The abstract of judgment was recorded with San Joaquin County on May 8, 2012. That lien attached to the debtor's residential real property in Ripon, California (6th Street). The debtor is seeking the court to avoid the lien.

The motion will be denied because it is based on an amended exemption in Amended Schedule C (filed December 5, 2014), which was not served on all creditors. Docket 63; see also Docket 3. While the Amended Schedule C was served on some creditors of the estate, it was not served on all creditors. Docket 66.

Further, the debtors must establish their entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

The subject motion does not establish the debtors' entitlement to a $175,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3). There is no evidence with the motion that the debtors meet the statutory criteria.

7. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO AVOID JUDICIAL LIEN
JB-5 — 3-20-15 [72]
VS. CAPITAL ONE BANK (USA), N.A.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Capital One Bank for the sum of $9,358.55 on February 1, 2012. The abstract of judgment was recorded with San Joaquin County on March 29, 2012. That lien attached to the debtor's residential real property in Ripon, California (6th Street).

The motion will be denied for the reasons stated in the ruling on the related lien avoidance motion on this calendar, DCN JB-4.

In addition, service on Capital One Bank violates Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Manager, or Agent Designated for Service of Process." Docket 76 at 2. This does not satisfy Rule 7004(h).

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

8. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO AVOID JUDICIAL LIEN
JB-6 — 3-20-15 [77]
VS. SAVE MART SUPERMARKETS

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Larry McCarren in favor of Save Mart Supermarkets for the sum of $9,258.46 on October 19, 2009. The abstract of judgment was recorded with San Joaquin County on December 3, 2009. That lien attached to the debtor's residential real property in Ripon, California (6th Street).

The motion will be denied for the reasons stated in the ruling on the related lien avoidance motion on this calendar, DCN JB-4.

9. 14-23576-A-7 GSO ENTERPRICES, INC. — MOTION TO APPROVE COMPROMISE
PGM-2 — 3-25-15 [37]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from May 4, 2015. The movant filed a supplemental pleading. An amended ruling from May 4 follows below.

The debtor has filed this motion on behalf of the trustee, seeking approval of

a settlement between the estate and the debtor's principal, Brodie Stephens, apparently settling that Mr. Stephens owes $30,000 to the estate and that such debt will be repaid via Mr. Stephens' pending chapter 13 case, as "administrative or priority claim." Docket 37 at 2.

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 amount owing is not being altered, given Mr. Stephens' apparent pending chapter 13 case, given the automatic stay in that case, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

10. 14-31876-A-7 JACQUELINE MASON-GRAY — MOTION FOR SANCTIONS 4-10-15 [34]

Tentative Ruling: The motion will be denied.

The debtor seeks damages for an alleged violation of the automatic stay by American Financial Services, Inc. (d.b.a. GM Financial). It repossessed the debtor's vehicle on March 17 and the later sent her a "notice of our plan to sell property".

American Financial opposes the motion, pointing out that the automatic stay had terminated before it repossessed the vehicle.

The motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Additionally, 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 December 5, 2014 and a meeting of creditors was first convened on January 14, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than January 4, 2015. The debtor filed a statement of intention on December 18, 2014, indicating an intent to retain and redeem the vehicle. Docket 17.

On March 2, 2015, the debtor filed an amended statement of intention, once again stating an intent to retain and redeem the vehicle. Docket 29.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain and redeem the vehicle, the debtor did not do so timely.

The debtor's contention that she called the court and "[t]he Bankruptcy Court clerk stated I had filed the necessary papers to suffice a 'Redemption' on their end" is rejected. Docket 34 at 4. The bankruptcy court is not the debtor's attorney and it does not give legal advice. The debtor has chosen to represent herself in this bankruptcy proceeding and any mistakes are her mistakes.

More, redemption is governed by 11 U.S.C. § 722 and Fed. R. Bankr. P. 6008, which require court approval after notice and a hearing. "On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law." Fed. R. Bankr. P. 6008.

The debtor should have filed a motion to redeem, set that motion for a hearing, and served the motion papers on the creditor, prior to the deadline of section 521(a)(2)(B). See also Local Bankruptcy Rule 9014-1. A review of the case docket indicates that the debtor never did this.

The assertion by the debtor that "[o]n March 2, 2015 [she] submitted through the Bankruptcy Courts a Redemption Request" is untrue. Docket 34 at 3. The court sees no such request on the case docket. The only document filed by the debtor on March 2 is an amendment of her statement of intention, which restates the debtor's original intention to retain and redeem the vehicle. Docket 29.

The statement of intention is not a motion or a request for redemption. The statement of intention is where the debtor discloses her intentions with reference to certain secured claims. That disclosure is not in itself a redemption or a motion for a redemption.

Moreover, even if this were a properly filed and served motion for redemption, it was filed late. It was filed 47 days after the January 14 initial meeting

of creditors.

And, no reaffirmation agreement has been filed, nor did the debtor request an extension of the 30-day period.

As a result, the automatic stay automatically terminated on February 13, 2015, 30 days after the initial meeting of creditors.

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 January 27, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, the automatic stay terminated on February 13, 2015.

Given the foregoing, there was not automatic stay in effect on March 17, 2015 or subsequently, as to the vehicle. This motion refers to no automatic stay violations prior to February 13, 2015. Therefore, the creditor's repossession of the vehicle and subsequent notification of intent to sell the vehicle did not violate the automatic stay.

Accordingly, the motion will be denied.

11. 13-28491-A-7 JAMES ENGLISH
TGM-6

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-23-15 [138]

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

The motion will be granted.

Boutin Jones Inc., attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $40,502 in fees and $1,751.08 in expenses, for a total of $42,253.08. This motion covers the period from November 4, 2013 through January 15, 2015. The court approved the movant's employment as the trustee's attorney on November 15,

2013. In performing its services, the movant charged hourly rates of $350 and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing and analyzing the debtor's assets, including trust assets and assets in entities, (2) reviewing and analyzing documents and asset transfers, (3) analyzing title and lien issues pertaining to estate assets, (4) negotiating estate asset sales, (5) preparing sales agreements, (6) preparing and prosecuting a sales motion, (7) propounding discovery, and (8) preparing and filing an employment motion.

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.

12. 15-21594-A-7 GAIL NESBIT — MOTION TO CONVERT CASE TO CHAPTER 13
SJS-1 — 4-2-15 [16]

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

However, while the debtor has established that he is within the eligibility debt limits for chapter 13 relief, the motion states nothing about whether the debtor has regular income to fund a chapter 13 plan.

More important, the debtor's Schedule J (Docket 1) reflects a negative income of $39.28, meaning that the debtor does not have any disposable income to fund a chapter 13 plan. Accordingly, the motion will be denied.

13. 14-30697-A-7 CAROLE PETERSEN — MOTION TO VACATE DISCHARGE AND CONVERT CASE TO CHAPTER 13
PGM-1 — 4-14-15 [64]

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

The debtor seeks to set aside her chapter 7 discharge and convert this case to

one under chapter 13.

The court will not set aside of the February 3, 2015 chapter 7 discharge. The motion cites authority permitting such relief. Although the reply refers to Fed. R. Civ. P. 60(a) and (b) and Fed. R. Bankr. P. 9024, this reference is not in the original motion. Thus, the respondents have not had an opportunity to respond.

Further, even if the court were to address Rules 60(a), 60(b) and 9024, the debtor has established no basis for setting aside of the discharge. There are no facts or showing in the record that the discharge was entered as the result of a clerical or court mistake, an oversight or omission found in a judgment, order, or other part of the record. There are no allegations of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, misconduct by an opposing party or satisfied, released or discharged judgment(s) warranting the setting aside.

The debtor's sole basis for seeking to set aside her discharge is that she wants the case converted to chapter 13. She complains that her prior counsel committed malpractice in not protecting her annuity by claiming the correct exemption and/or filing the correct type of bankruptcy case. The annuity is the principal source of income for the debtor. This is not basis for setting aside the chapter 7 discharge, however.

The debtor did nothing to avert entry of the discharge. Moreover, she complied with the requirements for entry of the discharge, including filing her personal financial management course certificate.

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

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

(A) the debtor is not an individual;

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

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

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

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

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

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

(H) the debtor has not filed with the court a statement of completion of a

course concerning personal financial management if required by Rule 1007(b)(7);

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

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

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

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under §521(f)."

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

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

Fed. R. Bankr. P. 4004(c)(2) provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain." 11 U.S.C. § 727(a)(1) also provides that "The court shall grant the debtor a discharge, unless . . . the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter." See also 11 U.S.C. § 727(a)(10) & Fed. R. Bankr. P. 4004(c)(1)(C).

A chapter 7 debtor knows the approximate date for the automatic entry of its chapter 7 bankruptcy discharge when the court issues a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines. In this case, that notice was issued by the court on October 31, 2014, one day after this case was filed on October 30, 2014. Docket 5.

The notice contains the deadline for filing objections to discharge and objections to the dischargeability of debts. Docket 5. Provided all conditions for the entry of discharge are satisfied, the discharge is entered on or soon after that date. Such conditions include, but are not limited to, the absence of a pending motion to delay the discharge, the absence of a waiver under section 727(a)(10), the filing of a personal financial management course certificate, and the absence of a complaint objecting to the debtor's discharge.

In other words, once all conditions for discharge entry are satisfied, the discharge is entered automatically, regardless of whether the debtor is being represented by an incompetent attorney or subjectively desires the entry of the discharge. These are not conditions to the automatic entry of discharge. See Fed. R. Bankr. P. 4004(c)(1).

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

The deadline for the filing of complaints objecting to discharge and for determining the dischargeability of debt was January 23, 2015. This deadline was on the notice of chapter 7 bankruptcy case, served on the debtor and her prior counsel on November 2, 2014. Dockets 5, 8.

The debtor filed a personal financial management course certificate on November 13, 2014. Docket 9. The debtor did not file a motion to delay the entry of discharge or request for waiver of the discharge, prior to its entry.

The court entered the debtor's discharge timely, after the debtor filed her personal financial management course certificate.

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

Accordingly, there was no clerical mistake or a mistake arising from oversight or omission, in connection with the entry of the debtor's discharge. There is no basis under Rule 60(a), 60(b), or 9024 for setting aside of the discharge. The request for vacating the chapter 7 discharge will be denied.

Nevertheless, this does not prevent the court from converting the case to chapter 13.

As a general rule, 11 U.S.C. § 706(a) permits a chapter 7 "debtor [to] convert a case under this chapter to a case under chapter . . . 13 of this title at any time." 11 U.S.C. §706(a). The Tenth Circuit held in In re Young, 237 F.3d 1168, 1173-74 (10th Cir. 2001), that an eligible debtor has a right to seek conversion at any time, including after the debtor receives his discharge.

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

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

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

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the

requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The court has reviewed the record and concludes that the debtor is not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtor is seeking the conversion to protect the annuity that makes up the principal source of her regular monthly income. The debtor receives approximately $1,030 a month from the annuity. This is a proper purpose for conversion to chapter 13.

The debtor has monthly disposable income of approximately $150. Docket 63, Amended Schedules I & J. Although this may not necessarily establish plan feasibility, it qualifies her for chapter 13 relief. The court does not need to assess chapter 13 plan feasibility at this time.

The debtor has no secured debt and has only approximately $34,130 in unsecured debt. Docket 1. The filed claims in the case total approximately $21,073 and chapter 7 administrative expenses total $11,128.

Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted subject to the debtor paying the chapter 7 administrative expenses via her chapter 13 plan.

14. 15-21397-A-7 JAMES/SHARON GASTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 4-15-15 [19]
THE BANK OF NEW YORK MELLON VS.

Tentative Ruling: The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Truckee, California.

The debtors oppose the motion, arguing that it is unnecessary because the debtors are about to receive their discharge. The deadline for objections to discharge and for filing complaints to determine the dischargeability of debts is May 18, 2015, the hearing for this motion. The debtors also oppose the granting of attorney's fees and the waiver of the 14-day stay of Rule 4001(a)(3).

The property has a value of $335,584 and it is encumbered by claims totaling approximately $340,238. 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 April 9, 2015.

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.

Finally, even though the debtors' discharge is to be entered soon after May 18, 2015, while the discharge has not been entered yet, the movant's motion is ripe for adjudication. Moreover, although the debtors' discharge would automatically dissolve the stay as to the debtors, the stay as to the estate would continue to be in effect. The trustee's filing of a report of no distribution does not automatically dissolve the stay as to the estate. Thus, there is nothing unnecessary as to this motion.

THE FINAL RULINGS BEGIN HERE

15. 08-35602-A-7 BHS-5 — MUZIO BAKING COMPANY, L.L.C. — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 4-15-15 [145]

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

The motion will be granted.

Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,320 in fees and $43.09 in expenses, for a total of $4,363.09. This motion covers the period from March 21, 2014 through April 15, 2015. The court approved the movant's employment as the trustee's attorney on April 15, 2014. In performing its services, the movant charged an hourly rate of $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) reviewing assets of the estate, (2) litigating claims against the former chapter 7 trustee's bond insurer for IRS and California Franchise Tax Board penalties incurred by the estate due to the untimely filing of estate tax returns, and (3) preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

16. 14-32408-A-7 JLB-2 — LINDA ANDERSON VS. CAPITAL ONE BANK (USA), N.A. — MOTION TO AVOID JUDICIAL LIEN 4-9-15 [23]

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 Capital One Bank for the sum of $6,130.62 on October 27, 2014. The abstract of judgment was recorded with El Dorado County on December 12, 2014. That lien attached to the debtor's residential real property in Pollock Pines, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $150,000 as of the petition date. Dockets 25 & 1. The unavoidable liens totaled $202,688.99 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. Dockets 23 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in Amended Schedule C. Dockets 23, 1, 9, 13.

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

17. 15-21725-A-7 JEFFERY BURCH AND LISA VALERIO-BURCH — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 4-7-15 [13]
WELLS FARGO 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 dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a 2009 Honda Civic vehicle.

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

On August 9, 2013, the debtors filed a chapter 13 case (case no. 13-30551). But, the court dismissed that case on September 23, 2014 due to the debtors'

failure to make plan payments. The debtors filed the instant case on March 4, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on April 3, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on April 3, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

18. 15-20527-A-7 JENNIFER OSWALD — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 4-16-15 [16]
WELLS FARGO 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 dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2008 Subaru Impreza vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on January 26, 2015 and a meeting of creditors was first convened on March 25, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than February 25. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30

days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so timely. And, no 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 April 24, 2015, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on March 25, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 24, 2015.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

19. 14-24839-A-7 KENNETH/ALICIA UNG — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 4-16-15 [81]
JES-2

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

argument.

The motion will be granted.

James Salven, CPA, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $2,125 in fees and $385.60 in expenses, for a total of $2,510.60. This motion covers the period from March 5, 2015 through April 14, 2015. The court approved the movant's employment as the estate's accountant on April 8, 2015. In performing its services, the movant charged an hourly rate of $250.

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

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

20.	12-37440-A-7 SCB-3	ROBERT SHAPIRO AND THERESA MARTINEZ-SHAPIRO	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 4-20-15 [24]

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

The motion will be granted.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,244.76, reduced from $5,370 in fees and $164.76 in expenses. This motion covers the period from January 14, 2015 through the present. The court approved the movant's employment as the trustee's attorney on January 29, 2015. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing assets of the estate, (2) assisting the estate with the sale of receivables, including negotiations and obtaining court approval of the sale, and (3) preparing and filing employment and compensation motions.

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

be approved.

21. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN
SLE-7
VS. CAPITOL ONE BANK
5-4-15 [74]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $5,006.03 on May 28, 2010. The abstract of judgment was recorded with Sacramento County on September 27, 2010. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be denied because it is unclear which lien the debtor is seeking to avoid. Although the motion refers to the judicial lien held by Capitol One Bank, the motion also states "that 2698.47 holds a judicial lien against the Lien Property in the amount of $2,698.47." Docket 74 at 2. And, the prayer for relief in the motion asks for avoidance of only the lien "held by 2698.47." Docket 74 at 3.

The record contains inconsistent statements as to the $2,698.47 lien. The supporting declaration states that the $2,698.47 lien is held by Vion Holdings. Docket 76 at 2.

Yet, neither 2698.47, nor Vion Holdings are listed in the attached Schedule D. Also, there is no abstract of judgment in the record for the purported $2,698.47 judicial lien.

Moreover, only Capital One Bank has been served with the motion. No other creditor has been served with the motion. Nevertheless, the prayer for relief in the motion does not ask for avoidance of the Capital One Bank lien. Docket 74 at 3. It asks for avoidance of only the $2,698.47 lien.

This is the seventh in a series of motions by the debtor pertaining to the above liens. Each of the prior motions has been dismissed or denied for various deficiencies. Dockets 26, 31, 44, 48, 56, 61. Once again the court will have to deny the debtor's motion, as it cannot tell what relief is sought by the debtor.

22. 14-25247-A-7 MANUEL VELASQUEZ — MOTION TO DISMISS CASE
GEM-2
4-28-15 [27]

Final Ruling: The motion will be dismissed without prejudice.

This motion was set for hearing on 20 days of notice in violation of Fed. R. Bankr. P. 2002(a)(4), which requires a minimum of 21 days' notice of the hearings on dismissal motions. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(4) requires a minimum of 21 days of notice of the hearing and because only 20 days' was given, notice is insufficient.

Next, the motion violates Rule 2002(a)(4) in another respect as well. The motion was not served on all creditors. Docket 29.

Further, the motion will be dismissed also because it requires written opposition "not less than seven (7) calendar days before the date set for hearing." Docket 28 at 2. There is no local rule requiring anyone to file a written opposition seven days prior to the hearing. The court suggests that the movant's counsel studies the court's local rules, including Local Bankruptcy Rule 9014-1(f)(1)-(3), before renewing this motion.

Finally, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. There is no evidence in the record that the case was filed "inadvertently," as asserted by the motion.

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)."

23. 15-21147-A-7 ANGELA BROWN
PPR-1
DEUTSCHE BANK NATIONAL TRUST CO. AMERICAS VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-7-15 [16]

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

The motion will be dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, Deutsche Bank National Trust Company Americas, seeks relief from the automatic stay as to a real property in Stockton, California.

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

On January 13, 2015, the debtor filed a chapter 13 case (case no. 15-20222). But, the court dismissed that case on February 13, 2015 due to the debtor's failure to timely file petition documents, including schedules and statements. The debtor filed the instant case on February 14, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on March 16, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 16, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

24. 08-26555-A-7 DESHON MCDANIEL — MOTION TO AVOID JUDICIAL LIEN
DDM-3
VS. A. TEICHERT AND SON, INC. — 4-8-15 [39]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, A. Teichert & Son, Inc. Docket 43. Service must comply with Fed. R. Bankr. P. 7004(b)(3). And, while the debtor served Teichert's attorneys, unless they agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

25. 15-21256-A-7 GARRETT/KIMBERLY RASH — MOTION TO COMPEL ABANDONMENT
NF-2 — 4-15-15 [28]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their burger business, Jake's Burgers and More.

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 a charbroiler, flat grill, deep fryer, three-door freezer, three-door refrigerator, chest freezer, breakfast freezer, portion food freezer, ice machine, ice cream machine, cash register, display cabinet, tables, chairs, prep tables, stainless steel shelving, plastic shelving, dishes, food and paper goods, with an aggregate

value of $8,870 (as described in Item 29 of Schedule B). Docket 31.

The assets have been claimed fully exempt in Schedule C. Docket 31. Given the exemption claims, 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.

26. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION TO AVOID JUDICIAL LIEN
RAC-2
VS. GLOBAL ACCEPTANCE CREDIT CO. L.P. — 4-29-15 [35]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[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 debtors served the motion on Global Acceptance Credit Co., 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." Docket 39. This violates Rule 7004(b)(3).

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

27. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION TO AVOID JUDICIAL LIEN
RAC-3
VS. DCFS TRUST — 4-29-15 [40]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, DCSF Trust. Docket 44. And, while the debtors served DCFS' attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

28. 13-31272-A-7 CALVIN/ROBYN DILES — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
BHS-5
4-16-15 [57]

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

The motion will be granted.

Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,517.50 in fees and $97.70 in expenses, for a total of $5,615.20. This motion covers the period from October 3, 2013 through April 16, 2015. The court approved the movant's employment as the trustee's attorney on October 8, 2013. In performing its services, the movant charged hourly rates of $325 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) reviewing assets of the estate, (2) litigating claims against the debtor's daughter for pre-petition transfers, (3) negotiating settlement of the claims, (4) recovering the transferred funds, (5) preparing and prosecuting an abandonment motion for an over-encumbered real property, and (6) 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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

29. 15-20772-A-7 PETER/SHAHALA KROLL — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 4-15-15 [15]
WILMINGTON TRUST, N.A. VS.

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

The motion will be granted.

The movant, Wilmington Trust, seeks relief from the automatic stay as to a real property in Medford, Oregon. The property has a value of $200,000 and it is encumbered by claims totaling approximately $313,842. The movant's deed is in first priority position and secures a claim of approximately $250,482.

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.

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.

30. 15-21576-A-7 JEREMY/KAREE HARRISON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
FIRST INVESTORS FINANCIAL SERVICES VS. — 4-20-15 [22]

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

The motion will be dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, First Investors Financial Services, seeks relief from the automatic stay as to a 2004 Chevrolet Silverado vehicle.

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

On November 4, 2013, the debtors filed a chapter 13 case (case no. 13-34186). But, the court dismissed that case on September 23, 2014 due to the debtors' failure to make plan payments. The debtors filed the instant case on February 27, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on March 29, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 29, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

31. 15-20987-A-7 CLIFFORD SMITH
PPR-1
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-15-15 [10]

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

The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Nevada City, California. The property has a value of $400,000 and it is encumbered by claims totaling approximately $517,776. The movant's deed is the only deed against the property and secures a claim of approximately $516,476.

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 April 23, 2015.

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.

32. 14-32289-A-7 ROSE/RAYMOND RASH
MOH-1
VS. THE BUTTE COUNTY CREDIT BUREAU, INC.

MOTION TO AVOID JUDICIAL LIEN
4-13-15 [18]

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 Raymond Rash in favor of Butte County Credit Bureau for the sum of $6,582.44 on May 30, 2002. The abstract of judgment was recorded with Butte County on June 17, 2002. That lien attached to the debtor's residential real property in Chico, California. The creditor's judgment was renewed on January 19, 2012, with a new balance of $12,555.80, including $6,027.36 in interest.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $110,169 as of the petition date. Dockets 20 & 1. The unavoidable liens totaled $39,395.85 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 20 & 1. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $175,000 in Schedule C. Dockets 20 & 1.

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

33. 14-32289-A-7 ROSE/RAYMOND RASH — MOTION TO AVOID JUDICIAL LIEN
MOH-2
VS. UNIFUND CCR PARTNERS — 4-13-15 [23]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[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 debtors served the motion on Unifund CCR Partners 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." Dockets 27 & 33. This violates Rule 7004(b)(3).

And, while the debtors served Unifund's attorneys, unless the attorneys agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).