UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 22, 2017 at 10:00 a.m.

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

3, 4, 7

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 19, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 5 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 12, 2016. 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. 13-30212-A-7 ARMANDO/NORA COTA — MOTION FOR APPROVAL OF COMPROMISE, ETC.
DMW-3 — 4-24-17 [48]

Tentative Ruling: The motion will be granted in part and denied in part without prejudice.

The trustee requests approval of a settlement agreement between the estate and debtor Nora Cota, on one hand, and Sacramento Regional Transit, on the other hand, resolving a litany of discrimination and harassment claims against SRT.

Mrs. Cota was one of 13 plaintiffs in the lawsuit. The portion of the settlement allocated to the estate and Mrs. Cota is $218,967.87, consisting of:

— $86,827.55 for compensation of the estate's special counsel ($83,076.93 representing a 40% contingency fee, plus $3,750.62 in expenses),

— $25,570 on account of a debtors' exemption claim, and

— approximately $107,140 will be available for the benefit of the estate.

The trustee asks for approval of the settlement and for approval of the special counsel's compensation.

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 the factual complexity of the litigation, given the uncertain probability of success, given that the settlement is part of a global resolution of claims of 13 plaintiffs, given the inherent costs, risks, delay and inconvenience of further litigation, and given that the settlement proceeds will pay all filed estate claims in full, 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 cannot approve the compensation of the estate's special counsel. There is no evidence in this motion from special counsel about the services he performed on behalf of the estate. The court must assess what services were performed, the period during which they were performed, the reasonableness of the compensation requested, the necessity of the services performed, and whether the compensation terms are improvident in light of developments not capable of being anticipated at the time of the fixing of such

terms. The motion is devoid of such information.

2. 17-22718-A-7 LISA DUNCKLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
ADR-1 — 5-1-17 [16]
TYA, L.L.C. VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, TYA, L.L.C., seeks relief from the automatic stay as to real property in Lodi, California.

The movant is the legal owner of the property and the debtor is leasing it. The debtor defaulted under the lease agreement in January 2017.

The motion will be denied because the evidentiary record in support of the motion is inadequate. Some of the evidence in the record is not admissible. Specifically, the supporting declaration does not state when the debtor was served with the three-day notice to pay or quit. Docket 18. The declaration merely states that the notice was served on the debtor pre-petition and that the notice expired pre-petition.

However, the notice is not in the record. References to when the notice expired are inadmissible hearsay. Fed. R. Evid. 801(c), 802.

The supporting declaration also does not say what, if anything, the movant did between the notice period expired and the debtor filed for bankruptcy. The motion papers are not clear on what has the movant done thus far to regain possession of the property. This is important for the court in determining cause under section 362(d)(1). Given these evidentiary deficiencies, the motion will be denied.

3. 17-21332-A-7 EMILY DEAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
RLD-1 — 5-2-17 [16]
RONALD RIECKEN 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, Ronald Riecken, seeks relief from the automatic stay to proceed in state court with its personal injury claims against the debtor. Recovery will be limited to available insurance coverage.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court

concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage.

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. 09-44733-A-7 ROBERT WIEMER — MOTION TO COMPEL ABANDONMENT 4-7-17 [224]
ULC-3

Tentative Ruling: The motion will be granted.

The debtor seeks to compel the trustee to abandon the estate's interest in a pending lawsuit (that is on appeal) against Nationstar Mortgage, L.L.C., Select Portfolio Servicing, L.L.C., Bank of America, Cal-Western Reconveyance, L.L.C., and U.S. Bank, including claims for intentional misrepresentation, negligent misrepresentation, promissory estoppel, negligence, trespass, and violation of Business and Professions Code § 17200. The lawsuit was filed on October 9, 2014 and it pertains to the debtor's real property in Carnelian Bay, California. See also Docket 205.

Although unsecured creditor Denise Rubino has filed a non-opposition, she is opposed to the abandonment of assets other than the lawsuit.

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.

The court denied a similar motion by the debtor two years ago, in April 2015, at which time the trustee expressed an interest in administering the lawsuit. Evidence with the motion indicates though that the trustee has done nothing to pursue the lawsuit. And, the debtor claims that the pending appeal of the lawsuit will be dismissed soon, if nothing is done to pursue it. The debtor desires to preserve his interest in the lawsuit before it is extinguished.

The trustee's nonaction with respect to the lawsuit indicates that it has no consequential value to the estate. Accordingly, the court will order the lawsuit abandoned to the debtor. No other relief will be granted. The motion will be granted.

5. 13-29339-A-7 RITA/CHARLES BOBINO — MOTION TO AVOID JUDICIAL LIEN 4-24-17 [51]
FF-2
VS. GREATER CA FINANCIAL SERVICES

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks avoidance of a judicial lien on real property in Vallejo, California.

The motion will be denied. The debtor amended Schedule C on April 20, 2017, to add an exemption in the subject property, but did not serve the Amended

Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 49. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

6. 13-29339-A-7 RITA/CHARLES BOBINO — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. AMERICAN EXPRESS CENTURION BANK — 4-24-17 [56]

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks avoidance of a judicial lien on real property in Vallejo, California.

The motion will be denied for two reasons. The abstract of judgment in the record does not indicate that it was ever recorded against the subject property. As such, the court cannot confirm that the purported lien ever attached to the subject property.

Further, the debtor amended Schedule C on April 20, 2017, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 49. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

7. 14-20142-A-7 NARVELL HENRY AND MONICA GONZALES HENRY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SSA-6 — 4-26-17 [79]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's attorney, 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Law Offices of Steven Altman, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $19,290 in fees (reduced by $450 per stipulation with the U.S. Trustee (Docket 94)) and $297.53 in expenses, for a total of $19,587.53. This motion covers the period from August 28, 2014 through April 19, 2017. The court approved the movant's employment as the trustee's attorney on September 17, 2014. In performing its services, the movant charged hourly rates of $90, $150, and $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 and analyzing pending employment discrimination litigation by the debtors, (2) discussing legal issues with special counsel, (3) analyzing exemption claims, (4) preparing and prosecuting motion to set bar date for amending exemptions, (5) analyzing claims against the estate, (6) assessing the cost of litigating the employment discrimination claims, (7) participating in mediation of the claims and settlement negotiations, (8) preparing and prosecuting a motion to approve settlement of the claims, and (9) 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.

8. 16-28443-A-7 SCOTT TIBBEDEAUX
17-2061
ALTMANN V. TIBBEDEAUX ET AL

HEARING RE:
DISMISSAL OF COMPLAINT FOR FAILURE TO PAY FILING FEE
5-9-17 [12]

Tentative Ruling: The adversary proceeding will be dismissed.

The plaintiff in this adversary proceeding, Ernie Altmann, sought waiver of the complaint filing fee. The court entered an order on May 9, 2017, denying the request and setting this May 22 hearing on the dismissal of the complaint due to the failure to pay the filing fee. Docket 12. As the court pointed out in its May 9 order, the court has no authority to waive the fee due from a creditor upon the filing of a discharge or dischargeability complaint. See 28 U.S.C. § 1930(f). Thus, unless the plaintiff pays the fee, the complaint will be dismissed.

9. 16-24261-A-7 C.C. MYERS, INC.
CHE-2
CALIFORNIA DEPT OF TRANSPORTATION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-10-17 [399]

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

The movant, California Department of Transportation, seeks relief from the automatic stay to proceed in state court with its cross claims for breach of contract and indemnity, among others, against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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.

The motion will be denied to the extent it seeks the stay relief order to be binding and effective in other bankruptcy cases filed by or against the debtor for a period of 180 days. There is no basis for such relief here. The motion cites no legal authority for such relief.

In rem relief is not warranted here. There is no basis for 11 U.S.C. § 362(d)(4) relief. The movant is not a secured creditor. See 11 U.S.C. § 362(d)(4).

In rem relief will be denied under 11 U.S.C. § 105 as well, as such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

10. 16-24261-A-7 C.C. MYERS, INC. MOTION TO ADVANCE INSURANCE PROCEEDS
MLS-1 4-24-17 [416]

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

The movants, Mark Beadleston, Linda J. Clifford, Steven A Francis, Robert D. Kittridge, Richard Farnsworth, Shane Dees and Robert Coupe, officers and/or directors of the debtor, seek prospective and retroactive relief from the automatic stay permitting the debtor's insurer, Chubb Insurance Company, to advance insurance proceeds in three state court actions involving fiduciary duty claims against the movants for conduct committed in their capacity as officers and/or directors of the debtor pre-petition. The advances of insurance proceeds are limited by the terms of the underlying insurance policy agreements.

The court will deny retroactive relief from stay as the movants have not explained when they first learned of the bankruptcy case and why they are only now seeking relief from stay.

The motion will be granted prospectively only as to insurance proceeds that are not property of the estate. Generally, insurance proceeds are not property of the estate. Yet, the motion states "[t]o the extent the proceeds of the [p]olicy is [*sic*] property of the [d]ebtors' estates [*sic*], the [c]ourt should approve the [o]rder and allow [the insurer] to advance the [i]nsurance proceeds." Docket 416 at 4.

The movants have not established basis for the advance of proceeds that are property of the estate. There is no evidence that there is any insurance proceeds are that estate property. See 11 U.S.C. § 362(d)(2).

No fees and costs are awarded because the movants are not over-secured creditors. See 11 U.S.C. § 506.

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

The court will strike Gary Janco's joinder to the motion. Docket 421. The civil and bankruptcy rules do not allow for the joinder of parties to motions or oppositions to motions.

11. 15-23164-A-7 DNL-7 — JF MCCRAY PLASTERING, INC. — MOTION TO APPROVE COMPROMISE 4-18-17 [69]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and Shawn McCray, the debtor's former principal, resolving the estate's interest in proceeds from a receivable belonging to the debtor, some of which proceeds ($266,977.28) were transferred to Mr. McCray and were used by him in part to fund an IRA and pay off an obligation secured by his interest in real property in Citrus Heights, California.

Mr. McCray received $266,977.28 on account of the receivable from the debtor's general contractor at a community college project. The general contractor is holding another $36,567 on account of the receivable, pending the approval of this settlement.

Mr. McCray's interest in the real property was subject to an avoidance action by the trustee in his mother's chapter 7 case, pending in Department B. Pursuant to a settlement of that action, the interest of the mother's estate in the real property has been released.

Under the terms of the compromise, the transfer of the debtor's receivable proceeds will be avoided, and the estate will recover the real property (except for a shed and a freestanding bar on the property) and the final proceeds of the receivable held by the general contractor, for the benefit of the estate. Mr. McCray will vacate the real property by May 31, 2017 and the trustee will sell it. The net proceeds from the sale will be distributed as follows: 60% to the estate and 40% to Mr. McCray.

In addition, the trustee will assign all claims of the debtor against Lathrop Construction Associates, Inc. Such claims in include, without limitation, causes of action pertaining to backdating of an Equipment Transfer Agreement between the debtor and Lathrop and pertaining to Lathrop improperly taking title to equipment owned by the debtor. If Mr. McCray chooses to prosecute the claims against Lathrop, the net proceeds from the claims will be divided as follows: 60% to Mr. McCray and 40% to the estate. Mr. McCray may settle the claims against Lathrop without the necessity for consent or authority from the estate. The estate and Mr. McCray will also exchange mutual releases.

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 motion will be denied without prejudice. The court is not convinced that the settlement is in the best interest of the estate. The motion says that Mr. McCray received $266,977.28 on account of the debtor's receivable and he placed some of those funds in a personal IRA and paid off a debt secured by the real property.

However, the motion says nothing about how much the debtor transferred into the IRA or how much secured debt was paid off. Nor does the motion say whether Mr. McCray still possesses or controls any of the $266,977.28.

The motion also does not say how much the trustee expects to recover from the sale of the real property and how that amount compares to the amount Mr. McCray misappropriated.

Without this information, the court cannot determine whether the settlement is in the best interest of the estate.

Finally, the court rejects the opposition of Lathrop Construction Associates, Inc. It makes no sense. The subcontract agreement between the debtor and Lathrop prohibits solely the assignment of "this SUBCONTRACT" and "any amounts due or to become due hereunder." Docket 74 at 2. The agreement does not prohibit the assignment of causes of action brought pursuant to the agreement. The court sees nothing in the opposition prohibiting the debtor or the trustee from transferring as part of a settlement or as part of a sale of a cause of action arising from the agreement.

The quoted language in the agreement is the boiler plate language prohibiting parties from assigning performance and receipt of funds due under the agreement. The trustee is not assigning performance and/or receipt of funds under the agreement. The agreement is no longer being performed. It has been terminated, rightfully or wrongfully. The debtor filed this chapter 7 bankruptcy case on April 17, 2015, over two years ago, and it has not been operating. The trustee is transferring causes of action arising from the agreement between the debtor and Lathrop. The trustee does not need permission from Lathrop to transfer causes of action against Lathrop.

The transfer of the claims against Lathrop to Mr. McCray has nothing to do with the assumption and assignment of executory contracts under 11 U.S.C. § 365 either. The agreement between the debtor and Lathrop is far from executory. As mentioned above, it terminated long ago.

Nor is the trustee transferring the causes of action against Lathrop under 11 U.S.C. § 363(f). Section 363 is implicated only in the event of a sale. This is not a sale. Even if it were, the trustee has not invoked section 363(f). The transfer of the causes of action is not free and clear of anything. It is subject to any encumbrances and/or defenses Lathrop might have to the claims.

12. 17-21069-A-7 IRENA KASHUBSKA — MOTION TO AVOID JUDICIAL LIEN
PR-1
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 4-27-17 [29]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, L.L.C. for the sum of $1,985.66 on June 26, 2014. The abstract of judgment was recorded with Placer County on September 2, 2014. That lien attached to the debtor's interest in a residential real property in Roseville, California. The debtor is seeking avoidance of the lien under section 522(f).

The motion will be denied for several reasons. First, although the supporting declaration states that there is a single mortgage against the property for $136,,875 in favor of Wells Fargo Home Mortgage, Schedule D lists no such secured claim. Dockets 31 & 9.

Second, the debtor claims to have only an $82,000 joint tenancy interest in the property, but does not disclose who else owns an interest in the property. The court is unclear how the debtor arrived at the $82,000 figure.

Third, the supporting declaration does not establish the debtor's entitlement to the $100,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(2). Docket 31. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

Fourth, the debtor's evidence of value for the property is inadmissible. Although the debtor values the property herself, she states that her valuation is based on "surrounding home values." Docket 31 at 2. But, the debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). The debtor's lay witness testimony cannot be based on scientific, technical or other specialized knowledge, such as surrounding home values. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Finally, the motion was served on a CEO even though the respondent is a limited liability company, managed by a managing member. Service should be corrected in the event the motion is reset for hearing.

13. 09-21374-A-7 LEROY/VICTORIA CROWE — MOTION FOR CONTEMPT
GRF-6 — 2-21-17 [25]

Tentative Ruling: None.

FINAL RULINGS BEGIN HERE

14. 16-28112-A-7 IMRE/LAURIE VOROS — MOTION TO AVOID JUDICIAL LIEN
LBG-6
VS. ABSOLUTE RESOLUTIONS IX, L.L.C. — 4-11-17 [52]

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 Imre Voros in favor of Absolute Resolutions IX, L.L.C. for the sum of $5,604.78 on September 14, 2015. The abstract of judgment was recorded with Nevada County on December 7, 2015. That lien attached to the debtor's residential real property in Grass Valley, 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 $126,000 as of the petition date. Dockets 54 & 55. The unavoidable liens totaled $146,137 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 31, 54, 55. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $27,110 in Amended Schedule C. Dockets 32, 54, 55.

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).

15. 16-28112-A-7 IMRE/LAURIE VOROS — MOTION TO AVOID JUDICIAL LIEN
LBG-7
VS. AMERICAN EXPRESS BANK, F.S.B. — 4-11-17 [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 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 Imre Voros in favor of American Express Bank for the sum of $6,765.73 on May 22, 2012. The abstract of judgment was recorded with Nevada County on July 22, 2016. That lien attached to the debtor's residential real property in Grass Valley, 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 $126,000 as of the petition date. Dockets 59 & 60. The unavoidable liens totaled $146,137 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 31, 59, 60. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $27,110 in Amended Schedule C. Dockets 32, 59, 60.

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).

16. 17-20316-A-7 MATTHEW BAKER — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 4-20-17 [35]
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 be dismissing the motion as moot, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Sacramento, 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 June 10, 2016, the debtor, along with his spouse, filed a chapter 7 case (case no. 16-23780). But, the court dismissed that case as to the debtor on August 17, 2016 due to his failure to appear at the meeting of creditors. The debtor filed the instant case on January 18, 2017. The prior chapter 7 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of

the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on February 17, 2017, 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 February 17, 2017, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

17. 16-28229-A-7 MARIA DE ALMEIDA — MOTION TO AVOID JUDICIAL LIEN
SLE-1
VS. AMERICAN EXPRESS BANK, F.S.B. — 4-18-17 [29]

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 American Express Bank for the sum of $2,009.74 on May 16, 2012. The abstract of judgment was recorded with Sacramento County on March 28, 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). The subject real property had an approximate value of $129,503 as of the petition date. Dockets 31 & 1. The unavoidable liens totaled $26,668.29 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 31 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $102,834.71 in Schedule C. Dockets 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).

18. 10-27435-A-7 THOMAS GASSNER — OBJECTION TO EXEMPTIONS
DNL-5
3-31-17 [90]

Amended Final Ruling: The trustee has continued the hearing on the objection to

July 31, 2017 at 10:00 a.m.

19. 17-20861-A-7 APRIL BOYER — MOTION TO AVOID JUDICIAL LIEN
RSG-1
VS. COLLECTO, INC. — 3-27-17 [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 Collecto, Inc. for the sum of $3,594.37 on February 3, 2016. The abstract of judgment was recorded with Sutter County on January 20, 2017. That lien attached to the debtor's interest in a residential real property in Yuba City, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $160,112 as of the petition date. Dockets 13 & 1. The unavoidable liens totaled $139,814 on that same date, consisting of a voluntary secured claim in favor of Burt Boyer for $77,000 and a mortgage in favor of Tri Counties Bank for $62,814. Dockets 13 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,298 in Schedule C. Dockets 13 & 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).

20. 16-22163-A-7 SYLVIA KINERSON — MOTION TO DEEM CLAIM AN AMENDMENT TO AN INFORMAL CLAIM
JDS-1 — 4-14-17 [56]

Final Ruling: The court continues the hearing to June 19, 2017 at 10:00 a.m., for the motion to be heard in connection with the debtor's objection to the proof of claim. See Dockets 62 & 63. The record on this motion is closed.

21. 17-21180-A-7 CYNTHIA CHAMBERLIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1
DEUTSCHE BANK NATIONAL TRUST CO. VS. — 4-14-17 [18]

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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to real property in Yuba City, California.

The trustee filed a report of no distribution on April 19, 2017. And, in the statement of intention, the debtor has indicated an intent to surrender the property. This is cause for the granting of relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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 property has a value of $250,244 and it is encumbered by claims totaling approximately $215,767. The movant's deed is the only encumbrance against the property.

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.