UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 23, 2016 at 10:00 a.m.

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

2, 4, 5

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 20, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 6, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 13, 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. 15-28018-A-7 MICHELLE SMITH — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
RJM-1 — 2-16-16 [17]

Tentative Ruling: The motion will be granted in part.

The court continued the hearing on this motion from March 14, 2016, in order for the parties to conduct discovery and for the debtor to file a reply to the respondent's opposition.

The debtor is asking the court to award damages against Tammy Mascadri for an automatic stay violation that led to the issuance of a civil warrant for the debtor's arrest for her failure to appear at a judgment debtor's examination. The examination was set after the filing of this bankruptcy case.

This motion seeks:

(1) $2,800 in actual damages against Ms. Mascadri, including $1,000 for the debtor's time and efforts to resolve the arrest warrant and $1,800 for the attorney's fees she is incurring, and

(2) $10,000 in punitive damages.

Ms. Mascadri filed a collection action in state court against the debtor and obtained a pre-petition money judgment for approximately $10,000. On October 5, 2015, the debtor was served with an order for examination in an effort by Ms. Mascadri to enforce her judgment against the debtor. The order required the debtor to appear on October 16, 2015 in state court.

The debtor filed the instant bankruptcy case on October 15, 2015. After filing the case on behalf of the debtor, the debtor's counsel telephoned Ms. Mascadri on October 15, apprising her of the bankruptcy filing.

The debtor did not appear at the October 16 examination. Ms. Mascadri attended the October 16 hearing and she requested and obtained from the state court a civil warrant for the debtor's arrest due to her nonappearance.

The meeting of creditors in the case was held on November 24, 2015. Ms. Mascadri appeared at the meeting. The trustee concluded the meeting on November 24, 2015, issuing a report of no distribution.

On February 12, 2016, the debtor was served at her home with the arrest warrant and a further notice to appear in state court on March 25, 2016. On February 16, 2016, the debtor received her chapter 7 discharge and filed this motion.

11 U.S.C. § 362(a) provides that:

"*Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—*

"*(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against*

the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

"(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

"(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).

A creditor who has violated the automatic stay is *required* to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection actions. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7 (B.A.P. 9th Cir. 2002); Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002). "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003).

Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

A movant can recover attorney's fees and costs as actual damages under section 362(k) for enforcing the automatic stay, for remedying the stay violation, and for prosecuting a request for damages. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1100-01 (9th Cir.

2015) (en banc) (expressly overruling Sternberg v. Johnston, 595 F.3d 937, 940 (9th Cir. 2010)); see also Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

As the bankruptcy stay is an injunction against the continuation of a judicial action or proceedings against the debtor to recover a pre-petition claim against the debtor, Ms. Mascadri's continued collection of her pre-petition judgment against the debtor was a willful violation of the automatic stay.

The order for examination was issued by the state court pursuant to an application by Ms. Mascadri, in an effort to enforce her pre-petition judgment against the debtor.

The court rejects Ms. Mascadri's contention that she did not know of the bankruptcy filing on October 16, 2015, when she appeared in state court to prosecute the order for examination against the debtor. The court does not believe Ms. Mascadri's statement that she did not speak with the debtor's counsel on October 15.

The court is persuaded that the debtor's counsel called Ms. Mascadri on October 15, providing her with actual notice of the bankruptcy filing. This is corroborated by the debtor's counsel's contemporaneous written records. Docket 31, Ex. E. The debtor's counsel called Ms. Mascadri on October 15 at the telephone number she listed on the Civil Bench Warrant form, which she admits to have completed (in part) on October 16. Docket 21, Ex. A; Docket 31, Ex. F, Interrogatory Response 4.

The court also rejects Ms. Mascadri's assertion that it was not her who prompted the issuance of the bench warrant. The warrant was issued by the state court due to the debtor's non-appearance at a hearing on an order for examination requested by Ms. Mascadri. In fact, Ms. Mascadri's assertion makes no sense as she admits to have prepared much of the Civil Bench Warrant form on October 16 herself. Docket 31, Ex. F, Interrogatory Response 4. Obviously, the state court would not have issued an warrant if Ms. Mascadri had not pressed the prosecution of enforcement of the order for examination.

Further, even if Ms. Mascadri did not know of the bankruptcy filing on October 16, she admits to receiving on October 17 the debtor's counsel's October 15 letter informing her of the bankruptcy filing. Docket 25, ¶ 13. Ms. Mascadri was required to reverse her collection efforts against the debtor, including reversing the order for examination. Her failure to do so was also a violation of the automatic stay.

Ms. Mascadri argues that she attempted to reverse her collection efforts. This is not true. Docket 31, Ex. F, Interrogatory Response 4. Ms. Mascadri did nothing to cancel the warrant from October 16, 2015 - when she prompted the state court to issue the warrant by filling out the Civil Bench Warrant form – until February 16, 2016, when this motion was filed.

After this motion was filed, Ms. Mascadri allegedly contacted the Sheriff's Office, which told her that the state court had issued the warrant. Ms. Mascadri obviously knew this because she was present in court on October 16, when the state court issued the warrant pursuant to information she herself provided to the court by filling out the Civil Bench Warrant form. In fact, the Sheriff told her that only the court can cancel the warrant. Docket 25 at 3. Yet, Ms. Mascadri did not apply with the state court to have the warrant cancelled.

Ms. Mascadri purportedly contacted the state court but was informed that there was "no hearing . . . to cancel." Docket 25 at 3. But, obviously a hearing is irrelevant to the cancellation of an warrant.

Although not a viable defense in any event, it is disingenuous for Ms. Mascadri to claim ignorance of the law. When Ms. Mascadri wanted an warrant issued for the debtor, she knew exactly what to do - she filled out a civil bench warrant form and submitted it with the court. On the other hand, Ms. Mascadri claims ignorance of the of the procedure to cancel a warrant.

The violation was willful because Ms. Mascadri knew of the bankruptcy case and intended her collection efforts. She learned of the automatic stay in this case on October 15, when the debtor's counsel telephoned her and told her about the filing and about the stay. Docket 20 ¶ 3. This was the day before the state court issued the arrest warrant for the debtor on October 16.

On October 15, along with calling her, the debtor's counsel sent Ms. Mascadri a letter disclosing the filing of the bankruptcy case. Docket 21, Ex. C. She was listed as a creditor in the case, and was served the usual notices creditors receive in a bankruptcy case. Docket 1, Schedule F.

Despite knowing of the bankruptcy and the resulting automatic stay, Ms. Mascadri failed to cancel the judgment debtor's examination and instead attempted to have the debtor arrested for her failure to appear.

Even if Ms. Mascadri learned of the bankruptcy on October 17, her continued failure to cancel the warrant constituted willful violation of the stay because she knew of the bankruptcy and yet did not request the state court to cancel the warrant she had caused to be issued. She purportedly attempted to have the warrant cancelled only after the debtor's arrest, indeed only after this motion was filed.

The court disagrees that the debtor was responsible for the continued stay violation because she did not file a notice of bankruptcy stay with the state court. For bankruptcy purposes, the party who violated the bankruptcy stay has the obligation to reverse the violation. In this case, the party who violated the stay is Ms. Mascadri. The debtor's failure to file a notice of stay with the state court does not absolve Ms. Mascadri from her obligation to reverse the stay violation.

The debtor, an individual, suffered the harm of having to redress an active warrant for her arrest. The debtor found out about the arrest warrant on February 12, 2016, when she was also served with a notice to appear in state court on March 25, 2016. Docket 19 ¶ 11. Ms. Mascadri's stay violation compelled the debtor to investigate the reason for the warrant, take time off work and retain an attorney to seek protection from the effects of the warrant.

Accordingly, the court will award actual damages to the debtor for Ms.

Mascadri's stay violations. The debtor has presented no specific evidence of how much time she has taken and/or will take off work to resolve the warrant issues. The court will not speculate.

Besides the debtor's attorney's fees, there is no evidence of actual damages in the record. The court is satisfied with the summary of the services of the debtor's counsel pertaining to the prosecution of this motion and defending the debtor in state court. His services include "communicating with the client regarding the warrant, sending official notifications to Mascadri, researching and drafting this Motion, anticipated time appearing in the bankruptcy court for this matter and also anticipated time appearing at the Debtor's warrant hearing on March 25, 2016, and follow-up matters with the court and Creditor after the hearing." Docket 20 ¶ 8.

While the court has received no further evidence of attorney's fees for the debtor since the March 14 continuance, the court is willing to entertain a further supplemental declaration from the debtor's counsel concerning any additional attorney's fees and costs incurred by the debtor.

Absent further evidence of attorney's fees and costs, the projected total of six hours for the above-enumerated services is reasonable, as it encompasses services for litigation in two forums, over a several-month period. The $300 hourly rate of the debtor's counsel is also reasonable, given the unusual nature of this post-bankruptcy litigation. Accordingly, absent further evidence of attorney's fees and costs, the court will award $1,800 to the debtor as actual damages for her attorney's fees.

In addition, the court will award punitive damages. Ms. Mascadri's violation of the automatic stay was particularly egregious because she knew of the bankruptcy case before the issuance of the arrest warrant, or at a minimum immediately after the issuance of the arrest warrant, and then she did nothing to stop the arrest.

If Ms. Mascadri had not appeared at the October 16 hearing in state court and had not urged the continued prosecution of the examination order, the state court would have had no reason to issue the arrest warrant. In other words, Ms. Mascadri took affirmative actions to get the state court to issue the arrest warrant, in spite of her knowing that this bankruptcy case had been filed.

Also, even if Ms. Mascadri discovered the bankruptcy filing on October 17, this was only the day after the warrant was issued, and she did nothing to reverse the warrant process.

The court will award $2,500 in punitive damages against Ms. Mascadri. This amount is reasonable in relation to the amount of the compensatory actual damages. It represents a ratio of less than 1.5 relative to the compensatory actual damages. Ms. Mascadri shall pay the damages awarded by this court to the debtor by sending payment to the debtor's counsel no later than seven days after entry of the order on this motion. The motion will be granted in part.

2. 16-22118-A-7 ROBERTO/LLEWELLYN VENTURA — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
THE BANK OF NEW YORK MELLON VS. — 4-30-16 [16]

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, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $394,000 and it is encumbered by claims totaling approximately $758,263. 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 May 4, 2016.

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.

3. 09-39133-A-7 LARRY/ABBIGAIL CLYMER — MOTION TO APPROVE REAFFIRMATION AGREEMENT 4-27-16 [22]
DRE-2

Tentative Ruling: The motion will be denied.

The debtors ask for approval of a reaffirmation agreement between them and Wells Fargo Home Mortgage with respect to the the first mortgage on their residence.

The motion will be denied for several reasons. First, the motion is not accompanied with a proof of service, indicating that it was served on the

parties in interest.

Second, the motion does not include the actual reaffirmation agreement the debtors are asking the court to approve. The court cannot approve an agreement without knowing what are its terms.

Finally, 11 U.S.C. § 524(c)(1) requires that the reaffirmation be "made before the granting of the discharge." Here, the debtors' discharge was entered on December 9, 2009. As this motion is being brought only now, the court surmises that the subject reaffirmation agreement was not made before the granting of the discharge.

4. 16-22537-A-7 BRENDA PRINCE — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1
ALLY BANK VS.
5-6-16 [9]

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

The motion will be granted.

The movant, Ally Bank, seeks relief from the automatic stay with respect to a 2012 Dodge Caravan. The movant has produced evidence that the vehicle has a value of $14,300 ($10,550 per Schedule B) and its secured claim is approximately $16,219. Docket 11.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

5. 15-27448-A-7 JOHN/SHAWNTA ODUM
CDH-4

MOTION TO APPROVE COMPROMISE
5-2-16 [40]

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

The motion will be granted.

The chapter 7 trustee requests authority to sell for $26,245.31 the estate's interest in two Volvo 670 trucks to Crestco Capital. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The purchase price represents the equity in the vehicles, as assessed by the trustee, after considering Crestco's secured claims against the vehicles.

The trustee also asks for the transaction to be approved as a settlement agreement between the estate and Crestco, whereby the trustee releases Crestco from any liability on account of its post-petition repossession of the vehicles.

After the debtor defaulted on its Crestco loans secured by the vehicles and filed this case, Crestco repossessed the vehicles in violation of the bankruptcy stay. As part of the vehicles' sale, the trustee wishes to compromise the stay violation claim against Crestco, releasing Crestco from liability on account of that claim, as additional consideration for Crestco's proposed purchase price.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The sale is subject to Crestco's encumbrances on the vehicles. The court will waive the 14-day period of Rule 6004(h).

The court will approve the transaction also as a settlement agreement. 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 estate's avoidance of having to pay a commission for the sale of the vehicles, given that the debtor's purchase of the vehicles is identified as a lease and not as a purchase, given that the debtor had failed to list the vehicles in the bankruptcy schedules, given that the debtor had missed several months of payments to Crestco by the time Crestco recovered the vehicles, 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.

6. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 7-28-15 [71]
WELLS FARGO BANK, N.A. VS.

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

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

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

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

7. 15-27053-A-7 TARLOCHAN/HARPREET DHALIWAL — MOTION FOR TURNOVER OF PROPERTY
MPD-3 — 4-22-16 [76]

Tentative Ruling: The motion will be granted.

The trustee requests turnover of rental proceeds totaling $5,310 from the debtors, for the rental of a mobile home property. The $5,310 figure represents: rental income of $950 a month for September 2015 (80% prorated as the case was filed on September 6, 2015), October 2015, November 2015, December 2015, January 2016 and February 2016, plus the tenant's $1,000 security deposit. The debtors have claimed only a $400-a-month rent and have turned over to the trustee only $1,200, asserting that they did not receive rent payments for the other three months of the foregoing period.

The trustee seeks the proceeds after receiving information from the tenant on the property, Larry Griff, that: he paid a $1,000 security deposit to the debtors in June 2015, when he moved onto the property; and he has been paying $950 a month in rent – timely and every month.

The debtors oppose the motion, denying that they received more in post-petition rental proceeds than the $1,200 ($400 a month for September, October, November 2015) they turned over to the trustee.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over "and account for, such property or the value of such property." See also 11 U.S.C. § 521(a)(4) (also requiring the debtor to "surrender to the trustee all property of the estate").

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

The court is not persuaded by the debtors' testimony about the rental payments. The court is not convinced of the debtors' credibility.

First, the debtors' case is littered with misrepresentations and half-truths from them. For instance, the debtors' September 20, 2015 Schedule I - signed under the penalty of perjury - lists no rental income, even though the debtors admit to have been renting their mobile home for many months pre-petition. Docket 16. It was not until October 13, 2015 that the debtors amended their Schedule I to include rental income. Docket 30.

Also, the debtors' September 20, 2015 Schedule G does not list any unexpired leases. Docket 16. Schedule G has not been amended to reflect the debtors' mobile home lease agreement.

In their September 20, 2015 Schedule A, the debtors represented that their real property had a value of $121,779, whereas this was obviously not true as they later amended that schedule to increase the value to $850,000. Dockets 16 & 27.

Second, in their declaration opposing the motion, while the debtors state that the home rental payments are $800 a month, this figure is in reference to another tenant on the property, Steve Boals.

The debtors give no details about their lease with Mr. Griff, who they admit moved onto the property in June 2015. Docket 90.

Third, the debtors do not deny having a $950 a month lease with Mr. Griff or that Mr. Griff paid a $1,000 security deposit. Their references to non-payment of the rent are only to Mr. Boals. "The tenant, Steve Boals, did not pay the rent starting in December so we could not pay the Trustee the agreed upon $400 per month." Docket 90 at 2.

Fourth, the debtors state that the signatures on the rental receipts are not theirs, while the signatures on the bankruptcy petition documents are theirs. Docket 90 at 2. It is misleading on the debtors' part to compare the signatures on the rental receipts received by Mr. Griff and submitted by the trustee with the debtors' signatures on the bankruptcy petition, when the debtors' petition signatures are electronic, marked solely as "/s/."

Fifth, the purported note from Steve Boals about him paying a reduced rent of

only $400 a month, due to the debtor and his son occupying one room in the home, is inadmissible and not probative. The note, attached as Exhibit 1 to the debtors' declaration in support of their opposition, is inadmissible hearsay. Docket 91; Fed. R. Evid. 802. The note is not signed under the penalty of perjury, it is dated May 20, 2015 and does not state anything about the current rental arrangement between the debtors and Mr. Boals. It refers to a rental arrangement with Mr. Boals that predates Mr. Griff's arrival at the property.

The note does not take into account Mr. Griff's presence on the property as of June 2015, which obviously altered the debtors' rental arrangement of the mobile home. Yet, the debtors say nothing about Mr. Griff's lease with them.

Sixth, the declaration from Mr. Griff is unequivocal. He states that: he is "a tenant occupying" the mobile home; he moved in the home on June 24, 2015; he paid a $1,000 security deposit to the debtors when he moved in the mobile home, in three installments of $500, $300 and $200; his agreement with the debtors is to pay $950 a month in rent, due on the first day of every month. Docket 80.

In short, the court has been persuaded that the debtors received the $1,000 deposit from Mr. Griff and received $950 a month from September 2015 through February 2015. As such, the court will order the debtors to turn over to the trustee the $5,310 balance on account of the deposit and post-petition rent. The motion will be granted.

8. 15-26780-A-7 ROY/DONNA PALMER — MOTION TO SELL AND TO PAY 4-25-16 [49]
BHS-5

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $525,000 the estate's interest in a real property in Lincoln, California to Gregory and Michelle Risse. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

The following claims will be paid from escrow:

- first mortgage for $74,000 in favor of Alvord,

- IRS lien in the amount of $88,958.26,

- California FTB lien in the amount of $20,050,

- Placer County property taxes in the amount of $14,020,

- Ford Motor Credit Company lien in the amount of $9,200,

- lien in favor of the Risses, the subject buyers, in the amount of $9,095,

- a lien held by Dowling Aaron, Inc. in the amount of $24,858.09,

- Richland Real Estate Fund, L.L.C. will receive $20,000 pursuant to a compromise with the estate (Docket 43),

- the debtors' $175,000 exemption claim,

- closing costs in the approximate amount of $1,500, and

- realtor commission in the amount of $15,750.

The trustee does not anticipate any tax consequences from the sale. He anticipates the estate to generate net sale proceeds of approximately $72,568.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The sale will generate substantial proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, in accordance with the approved terms of employment for the real estate broker.

9. 16-21982-A-7 LORENZO SMILEY — MOTION TO AVOID JUDICIAL LIEN
DED-1
VS. THE 704 GROUP, LLC — 4-27-16 [13]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of The 704 Group, L.L.C., for the sum of $14,174.53 on October 24, 2013. The abstract of judgment was recorded with San Joaquin County on March 3, 2014. That lien attached to the debtor's residential real property in Lathrop, 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 $386,920 as of the petition date. Dockets 15, 16, 1. The unavoidable liens totaled $596,344.02 on that same date, consisting of a first mortgage in favor of Select Portfolio Servicing in the amount of $575,359 and a second mortgage in favor of California Housing Finance Agency in the amount of $20,985.02. Dockets 16 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Dockets 15 & 11.

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).

The court rejects The 704 Group's opposition that: 1) the proper exemption statute is not Cal. Civ. Proc. Code § 703.140(b), but it is Cal. Civ. Proc. Code § 704.730(a); and 2) there is no exemption impairment here because the property is overencumbered.

Bankruptcy debtors have two choices of exemption schemes in California, the so known regular exemptions (Cal. Civ. Proc. Code § 704.010 through 704.995 (excluding Cal. Civ. Proc. Code § 703.140)) or the special exemptions of Cal. Civ. Proc. Code § 703.140, which mirror the federal bankruptcy exemption scheme. See, e.g., In re Geisenheimer, 530 B.R. 747, 749-50 (Bankr. E.D. Cal. 2015).

Based on the respondent's limited opposition, the court finds nothing wrong

with the debtor utilizing the special exemption scheme here.

And, the debtor is not required to have equity in the property in order for his exemption to be impaired. The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor *could* claim *if there were no liens on the property*."

FINAL RULINGS BEGIN HERE

10. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO ABANDON
MDM-1 — 4-21-16 [955]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a computer server, two hard drives and paper records consisting of virtually all of the debtor's records. This includes legal, financial, employee-related, job-related and other miscellaneous documents.

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

The trustee has liquidated all property and is now analyzing the claims against the estate. The trustee no longer has need for the subject personal property items. As it costs the estate approximately $5,000 a month to store and maintain the property, the trustee asserts that the property is burdensome to the estate. Given this, the court will order that the property items be abandoned. The motion will be granted.

11. 13-33728-A-7 MARIA KESSLER — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DMW-4 — 4-20-16 [49]

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,628.50 in fees and $98.82 in expenses, for a total of $1,727.32. This motion covers the period from September 1, 2015 through April 18, 2016. The

court approved the movant's employment as the estate's accountant on September 3, 2015. In performing its services, the movant charged hourly rates of $345 and $365.

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

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

12. 15-24833-A-7 IGOR PETROVSKI — MOTION TO VACATE DISMISSAL OF CASE 4-22-16 [31]
CJJ-2

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 32. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

13. 16-22133-A-7 WILLIAM/DEBRA BRADFORD — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-19-16 [23]
APN-1
WELLS FARGO BANK, N.A. VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on April 22, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). The court also notes that the movant does not request in rem or retroactive relief from stay.

14. 16-20837-A-7 JAMES BARRETT — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-22-16 [20]
EAT-1
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 granted.

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

property in Anaheim, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

The motion will be granted as to the debtor under section 362(d)(1) for cause because the property is not listed in the debtor's schedules and the movant's claim of $507,865 secured by the property is also not listed in the debtor's schedules.

The debtor's Schedule A does not list ownership interest in a real property. Schedule D does not list the movant's claim either.

Yet, the original borrowers under the loan held by the movant, Joseph Chumpitazi and Rebecca Chumpitazi, transferred the property to the debtor and themselves on November 15, 2015. Docket 23, Ex. 11. The debtor filed this case on February 16, 2016. The movant was not apprised of the transfer until February 7, 2016.

The court will lift the stay as to the estate under section 362(d)(1) as well, given the debtor's denial in the schedules of owning an interest in the property, given the questionable partial transfer of the property to the debtor, given that the property has been on the verge of foreclosure for years now (since 2010), and given the trustee's non-opposition to the motion and report of no distribution in the case (filed March 17, 2016).

The transfer of the property to the debtor is questionable as it was done without the movant's consent, it was done just several months prior to this filing, it was done along with two other transfers of fractional interest in the property to individuals who eventually filed for bankruptcy, and the debtor did not disclose his interest in the property in this case. Docket 22.

Joseph Chumpitazi and Rebecca Chumpitazi transferred fractional 1/16 interest in the property in August 2007 to Juan Nunez, who filed for bankruptcy on June 12, 2015. The movant was not informed of this transfer until June 17, 2015. Importantly, the grant deed presented to the movant is unrecorded and the notarization date is October 16, 2015. Importantly, the grant deed presented to the movant is unrecorded and the notarization date is June 16, 2015. Docket 22 at 5; Docket 23, Ex. 7.

Joseph Chumpitazi and Rebecca Chumpitazi transferred fractional 1/16 interest in the property in August 2009 to Tony Martinez, who filed for bankruptcy on October 8, 2015. The movant was not informed of this transfer until October 27, 2015. Docket 22 at 5. Importantly, the grant deed presented to the movant is unrecorded and the notarization date is October 16, 2015. Docket 22 at 5-6; Docket 23, Ex. 9.

Also, the borrower, Joseph Chumpitazi, has filed for bankruptcy several times without prosecuting his bankruptcy cases. He filed a chapter 7 in May 2012. The case was dismissed in July 2012. He filed a chapter 7 in August 2012. The case was closed without the entry of discharge in February 2013. He filed a chapter 13 in April 2014. The case was dismissed in September 2014, with a 180-day bar to refiling. Docket 22 at 4-5.

Payments on account of the movant's loan have not been made since June 2009. Docket 22 at 4.

Thus, the motion will be granted as to both the debtor and the estate 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.

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 movant has proffered no evidence of value for the property.

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

Finally, the court will grant relief under section 362(d)(4), which prescribes that:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The two prior transfers of interest in the property by the borrowers were done without the movant's consent, the grantee in each case filed for bankruptcy, and the transfers were done after each grantee had filed for bankruptcy, given the grant deed notarization dates. This is the sixth bankruptcy case affecting the subject property since May 2012.

From the totality of the foregoing, the court infers that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, involving transfer of part ownership of the real property without the consent of the movant and involving multiple bankruptcy filings. Accordingly, the court will grant relief under section 362(d)(4).

15. 16-21754-A-7 ALEJANDRO/ANDREA LOERA — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 4-25-16 [10]
DAIMLER TRUST 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, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2014 Mercedes Benz ML350. The vehicle has a value of $36,000 and the outstanding debt under the lease agreement (with the residual) totals approximately $41,962. The debtor also has not made one pre-petition and one post-petition payments under the lease agreement. The debtors have indicated an intent to surrender the vehicle in their statement of intention. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

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

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

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

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

16. 15-26780-A-7 ROY/DONNA PALMER — MOTION TO APPROVE COMPROMISE
BHS-4 — 4-25-16 [43]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Richland Real Estate Fund, L.L.C., resolving Richland's pending litigation against the debtors pertaining to a pre-petition option to purchase a real property in Lincoln, California, granted by the debtor to Richland.

The debtors granted the option for Richland to purchase the property for $460,000 in June 2015. Richland funded $90,000 with the title company toward the purchase of the property in July 2015. Few days later, however, Richland filed a lawsuit against the debtors, alleging a breach of the option agreement

by the debtors and seeking a specific performance. Richland also recorded a lis pendens against the property. The debtors delivered a letter to Richland on August 20, 2015, rescinding the option for violations of various state law provisions. The debtors filed this bankruptcy case on August 28, 2015.

Richland filed a $115,000 general unsecured proof of claim against the estate.

In January 2016, the trustee received a $525,000 offer for the purchase of the property. The subject settlement agreement resolves the lis pendens against the property, resolves Richland's pending litigation and resolves Richland's proof of claim in this case.

Under the terms of the compromise, Richland will receive $20,000 from the property's sale proceeds and will receive back the $90,000 it funded toward its pre-petition purchase of the property. In exchange, Richland will dismiss the pending litigation, withdraw the lis pendens and withdraw its proof of claim against the estate.

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 pending litigation, given the pending offer for the purchase of the property, given that the debtors rescinded the option pre-petition, given the proof of claim filed against the estate, 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.

17. 13-28491-A-7 JAMES ENGLISH
TGM-7

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-20-16 [169]

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.

Boutin Jones Inc., attorney for the trustee, has filed its second and final motion for approval of compensation. The requested compensation consists of $42,414.30 in fees (includes $2,050 in fees for the preparation of this motion) and $479.06 in expenses, for a total of $42,893.36. This motion covers the period from January 16, 2015 through March 31, 2016. 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 $210, $325, $390, $410.

In connection with the movant's prior interim request, the court awarded compensation consisting of $40,502 in fees and $1,751.08 in expenses, for a total of $42,253.08, covering the period from November 4, 2013 through January 15, 2015.

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) investigating the debtor's borrowing relating to a Chevron/Standard gas station, (2) prepare for and attend a meeting with the debtor and his counsel, (3) investigating and analyzing estate claims against Mr. Faquiryan and Namath Kandahari pertaining to unpaid loans, (4) prepare for and attend a meeting with Mr. Faquiryan, (5) preparing and prosecuting a complaint against Mr. Faquiryan and Namath Kandahari, (6) obtaining judgments against Mr. Faquiryan and Namath Kandahari, (7) conferring with the trustee about various issues, and (8) preparing and filing compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved. The court will approve also all compensation to the movant on a final basis.

18. 11-42492-A-7 JEFFREY/GAYE WILSON — MOTION TO AVOID JUDICIAL LIEN
MAC-2
VS. ARROW FINANCIAL SERVICES L.L.C. — 5-5-16 [43]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Arrow Financial Services, L.L.C. 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 47 & 48.

And, while the debtor served Arrow'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). Dockets

47 & 48.

19. 11-42492-A-7 JEFFREY/GAYE WILSON — MOTION TO AVOID JUDICIAL LIEN
MAC-3
VS. CACV OF COLORADO, L.L.C. — 5-9-16 [49]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on CACV of Colorado, L.L.C. 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 53.

And, while the debtor served CACV's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 53.

20. 11-42492-A-7 JEFFREY/GAYE WILSON — MOTION TO AVOID JUDICIAL LIEN
MAC-4
VS. DISCOVER BANK — 5-9-16 [54]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Discover Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the motion indicates that the notice was not served by certified mail and it was not addressed to an officer of the creditor. It was addressed to no one in particular. Docket 58.

And, while the debtor served Discover's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 58.

21. 11-42492-A-7 JEFFREY/GAYE WILSON — MOTION TO AVOID JUDICIAL LIEN
MAC-5
VS. UNIFUND CCR PARTNERS ASSIGNEE — 5-9-16 [59]

Final Ruling: The motion will be dismissed without prejudice because the motion was not served on the respondent creditor Unifund CCR Partners. Docket 63.

While the debtor served Unifund's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 63.

22. 11-42492-A-7 JEFFREY/GAYE WILSON
MAC-6
VS. UNIFUND CCR PARTNERS

MOTION TO
AVOID JUDICIAL LIEN
5-9-16 [64]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on 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." Docket 68.

And, while the debtor served Unifund's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 68.

23. 16-21797-A-7 ANA SAUCEDO
JCW-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-19-16 [15]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Live Oak, California. The property has a value of $195,940 and it is encumbered by claims totaling approximately $349,184. The movant's deed is the only deed against the property and secures a claim of approximately $345,716.

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 27, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

The court determines that this bankruptcy proceeding has been finalized for

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

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

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

24. 16-20198-A-7 RALPH GUERRERO
EAT-1
HSBC BANK USA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-18-16 [14]

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

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

The movant, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on April 18, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $75,000 and it is encumbered by claims totaling approximately $290,449. The movant's deed is in first priority position and secures a claim of approximately $239,685.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 12, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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