UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 16, 2014 at 10:00 a.m.

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

1, 2, 3, 6, 7, 11, 12, 13, 18

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

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

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

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JULY 7, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 23, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 30, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

Matters called beginning at 10:00 a.m.

1. 14-21713-A-7 MARY TAYLOR — MOTION FOR RELIEF FROM AUTOMATIC STAY
EGS-1
BAYVIEW LOAN SERVICING, L.L.C. VS. — 6-2-14 [26]

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, Bayview Loan Servicing, seeks relief from the automatic stay as to real property in Cocoa, Florida. The property has a value of $48,860 and it is encumbered by claims totaling approximately $120,847. 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 14, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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.

2. 14-24817-A-7 JULIE ADAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
AMERICAN HONDA FINANCE CORPORATION VS. — 5-23-14 [9]

Tentative Ruling: The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2012 Honda Civic vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement

whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on May 7, 2014 and a meeting of creditors was first convened on June 16, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 6. The debtor filed a statement of intention on the petition date without listing the vehicle in it and without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor filed a statement of intention on the petition date, the statement does not list the subject vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 6, 2014, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on June 6, 2014.

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

3.	14-24522-A-7 BRANDON MARINO	MOTION TO
	JCK-1	AVOID JUDICIAL LIEN
	VS. AMERICAN EXPRESS BANK	5-29-14 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtor in favor of American Express Bank for the sum of $11,579.30 on February 21, 2014. The abstract of judgment was recorded with San Joaquin County on April 10, 2014. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $240,000 as of the date of the petition. The unavoidable liens total $291,573 on that same date, consisting of a single mortgage in favor of Loancare Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1,000 in Schedule C.

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

4. 10-44626-A-7 DENISE/JOSEPH CAUDLE — MOTION TO AVOID JUDICIAL LIEN
MG-4
VS. DISCOVER BANK
5-7-14 [52]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Joseph Caudle in favor of Discover Bank for the sum of $4,840.80 on December 9, 2009. The abstract of judgment was recorded with Solano County on February 9, 2010. That lien attached to the debtors' residential real property residence in Vacaville, California (5362 Alonzo Road).

The debtors are asking the court to avoid the subject lien on that property. Their motion will be denied because while the debtors are asking the court to avoid the lien on 5362 Alonzo Road, the value of and encumbrances against that property in the motion are for another property listed in Schedule A, 705 Oregon Street. In Schedule A, the value of 5362 Alonzo Road is $125,235 and it is encumbered by a single mortgage for $137,764 in favor of First Horizon Home Loans. Yet, the motion states that the value of 5362 Alonzo Road is $150,000 and it is encumbered by a single mortgage for $220,482 in favor of Wachovia.

Because of this discrepancy, the court will not speculate about the property as to which the lien should be avoided. The motion will be denied.

5. 10-44626-A-7 DENISE/JOSEPH CAUDLE — MOTION TO AVOID JUDICIAL LIEN
MG-5 — 5-12-14 [53]
VS. KELKRIS ASSOCIATES, INC.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Kelkris Associates, Inc. for the sum of $23,700.03 on April 6, 2010. The abstract of judgment was recorded with Solano County on June 1, 2010. That lien attached to the debtors' residential real property residence in Vacaville, California (5362 Alonzo Road).

The debtors are asking the court to avoid the subject lien on that property. Their motion will be denied because while the debtors are asking the court to avoid the lien on 5362 Alonzo Road, the value of and encumbrances against that property in the motion are for another property listed in Schedule A, 705 Oregon Street. In Schedule A, the value of 5362 Alonzo Road is $125,235 and it is encumbered by a single mortgage for $137,764 in favor of First Horizon Home Loans. Yet, the motion states that the value of 5362 Alonzo Road is $150,000 and it is encumbered by a single mortgage for $220,482 in favor of Wachovia.

Because of this discrepancy, the court will not speculate about the property as to which the lien should be avoided. The motion will be denied.

6. 14-24726-A-7 MARTINA ROCKS — MOTION FOR RELIEF FROM AUTOMATIC STAY
FHS-1 — 6-2-14 [11]
AMPERSAND OPPORTUNITY FUND I, L.P. 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, Ampersand Opportunity Fund I, L.P., seeks relief from the automatic stay as to real property in Chico, California. The movant is the legal owner of the property. The movant acquired the property in March 2014 from the debtor's landlord, Chris Trowbridge, from whom the debtor had been leasing. On March 7, 2014, the movant gave the debtor a 60-day notice to vacate the property. That notice was due to expire on May 6, 2014, one day after the debtor filed the instant bankruptcy case on May 5.

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

The trustee filed a report of no distribution on June 4, 2014, indicating an intent not to administer any property in this case.

This is a liquidation proceeding and the debtor has no ownership interest in

the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due for May 2014. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go to state court in order for that court to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

While the movant states that it will be seeking to recover from the debtor rent accrued post-petition, the motion has not demonstrated that such rent is necessarily a post-petition claim that will not be subject to the debtor's discharge. See 11 U.S.C. § 101(5); see also California Dept. of Health Servs. v. Jensen (In re Jensen), 995 F.2d 925 (9th Cir. 1993).

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

As the movant has not even filed an eviction action against the debtor yet, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

7. 14-23732-A-7 ARACELY ONTIVEROS — MOTION TO TRANSFER CASE 5-29-14 [16]
TOG-1

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the 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.

The debtor asks the court to move her case to the Fresno Division of the Eastern District of California because the case was erroneously filed in the Sacramento Division. The debtor resides in Parlier, California, Fresno County.

Local Bankruptcy Rule 1002-1(a) provides that: "Petitions for relief under Title 11 of the United States Code, shall be assigned to one of the three divisions of the Eastern District as determined by the following: (a) Fresno Division. Petitions from the Counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare shall be assigned to the Fresno Division."

Given that the debtor resides in Fresno County, the court will transfer the case to the Fresno Division.

8. 14-22142-A-7 SUSAN STEVENSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 5-9-14 [20]
LSF8 MASTER PARTICIPATION TRUST VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, LSF8 Master Participation Trust, seeks relief from stay under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4) as to 18195 Hayes Way Cottonwood, California.

The motion will be denied because it assumes that the property as to which the movant seeks stay relief is the same as the property listed in the debtor's Schedule A. However, that is not the case. The property listed in the debtor's Schedule A is 18175 Hayes Way, Cottonwood, California. The motion does not explain the discrepancy in the addresses between the property described in the motion and the property listed in Schedule A.

This is important because the motion assumes that the value of 18195 Hayes Way, Cottonwood, California is the scheduled value for 18175 Hayes Way, Cottonwood, California as listed in Schedule A, $185,000. The court is not satisfied with the evidence of value for 18195 Hayes Way Cottonwood, California produced by the movant. Thus, the court cannot determine whether and to what extent the movant's interest in the property is protected, in order to adjudicate the request for 11 U.S.C. § 362(d)(1) and (d)(2) relief.

Further, although the movant claims that Susan and John Orey transferred interest in 18195 Hayes Way Cottonwood, California to the debtor on July 30, 2013, the court cannot confirm that the property transferred to the debtor is the property listed in Schedule A. Docket 25, Ex. 3. The address of the transferred property is not apparent from the face of the grant deed submitted by the movant. Id. As a result, the court cannot confirm that the debtor even knew of the transfer and thus cannot conclude that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors, for 11 U.S.C. § 362(d)(4) purposes.

In short, the court is unwilling to grant any relief to the movant without an explanation reconciling the discrepancy in the addresses between the property referenced in the motion and the property listed in Schedule A.

9. 13-34447-A-7 LAURIE APARICO — MOTION TO SELL
JRR-2 — 5-15-14 [33]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee requests authority to short-sell as is and where is for $290,000 the estate's interest in real property in Jackson, California to Barbara Ayres Ball Trask, Revocable Living Trust.

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 property is subject to two mortgages, the first for approximately $242,592.78 in favor of JPMorgan Chase Bank and the second for approximately $178,421 (per Schedule D) also held by JPMorgan Chase Bank. The first mortgage will be paid in full, whereas JPMorgan Chase Bank has agreed to accept only $6,000 in full satisfaction of the second mortgage.

In addition to the foregoing encumbrances, the trustee will pay out of escrow also real property taxes and utility liens and will pay $20,400 to the real estate broker, Coldwell Banker Sutter Creek Associates.

The trustee anticipates the estate to net $15,000 from the sale in the form of a carve-out.

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 $15,000 in 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).

However, the court cannot authorize payment of $20,400 in real estate commissions. While the motion and listing agreement confirm that the commission should be 6% of the purchase price, the trustee seeks payment of $20,400 or a 7.034% commission to the real estate broker. $20,400 is a 7.034% commission based on the proposed $290,000 purchase price. A 6% commission based on the proposed $290,000 purchase price amounts to $17,400. Thus, the court will authorize the payment of only $17,400 or 6% of the $290,000 purchase price. The motion will be granted in part.

10. 13-32852-A-7 LINDA ROGERS — MOTION TO AVOID JUDICIAL LIEN
DRE-3
VS. DENBY SQUARE TOWNHOMES ASSOC. — 5-14-14 [41]

Tentative Ruling: The motion will be denied.

The record does not indicate that the respondent obtained a judgment against the debtor that was recorded in the chain of title to the debtor's home. Rather, the notice of assessment of lien indicates that the respondent is a homeowner's association that filed a lien pursuant to an agreement with the debtor or a statute. Whichever it is – a consensual lien or a statutory lien, it is not a judicial subject to avoidance pursuant to 11 U.S.C. § 522(f)(1)(A).

11. 14-23855-A-7 RANDOLPH BROOKE — MOTION TO AVOID JUDICIAL LIEN
JCK-1
VS. EQUABLE ASCENT FINANCIAL — 5-29-14 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtor in favor of Equable Ascent Financial for the sum of $3,302.74 on January 26, 2011. The abstract of judgment was recorded with San Joaquin County on August 4, 2011. That lien attached to the

debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $140,100 as of the date of the petition. The unavoidable liens total $149,146 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1,000 in Schedule C.

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

12. 14-23855-A-7 RANDOLPH BROOKE — MOTION TO AVOID JUDICIAL LIEN
JCK-2
VS. BH FINANCIAL SERVICES, L.L.C. — 5-29-14 [18]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtor in favor of BH Financial Services, L.L.C. for the sum of $5,260.60 on August 23, 2013. The abstract of judgment was recorded with San Joaquin County on October 1, 2013. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $140,100 as of the date of the petition. The unavoidable liens total $149,146 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1,000 in Schedule C.

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

13. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO ABANDON
MPD-7 — 5-23-14 [72]

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 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.

The trustee wishes to abandon the estate's interest in the following real properties: 7429 Hickory Avenue, Orangevale, California, 7421 Hickory Avenue, Orangevale, California (unimproved lot), a lot of land in Sacramento, California, and real property in North Highlands, California.

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.

7429 Hickory Avenue has a scheduled value - which the trustee does not dispute - of $850,000, whereas it is subject to a secured claim for approximately $899,044.

7421 Hickory Avenue has a scheduled value - which the trustee does not dispute - of $240,000, whereas it is subject to a secured claim for approximately $240,000. See Dockets 65 & 70.

The Sacramento lot is of no value to the estate because it is in the common area of planned unit development that is equitably owned by the homeowner's association. The trustee claims that the value of the lot is $1.00.

The North Highlands property has a scheduled value - which the trustee does not dispute - of $130,000, whereas it is subject to a secured claim for approximately $202,000.

Given the above, the court concludes that the properties are of inconsequential value to the estate. The motion will be granted.

14. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO APPROVE COMPROMISE
MPD-2 — 5-19-14 [99]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Helena Torre, resolving their claims in:

- a pre-petition appeal by the debtors of a $92,082 judgment obtained by Ms. Torre against them in a trespass action she brought in January 2011,

- a pre-petition public nuisance action brought by the City against the debtors,

- a cross-complaint the debtors filed against the City, Ms. Torre and others in the nuisance action, and

- a quiet title action the debtors brought against Ms. Torre on September 4, 2013.

The trespass action that resulted in the judgment appealed by the debtors, an 11 U.S.C. § 523(a)(6) adversary proceeding brought by Ms. Torre against the debtors, a notice of claim the debtors filed against the City and some of its employees on September 6, 2013, and Ms. Torre's January 6, 2014 proof of claim filed in this case are not affected by this settlement.

Under the terms of the compromise, Ms. Torre will pay $10,000 to the estate. In exchange, the trustee will dismiss with prejudice the trespass action appeal, the quiet title action and the debtors' cross claims against Ms. Torre in the City's nuisance action. The parties will execute 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 court concludes that the Woodson factors balance in favor of approving the compromise. The trustee has investigated the merits of the debtors' appeal of the trespass action and other claims being compromised. Reversal of the trespass action judgment against the debtors is unlikely as the jury findings and verdict appear to be supported by the evidence presented at trial.

The cross claims for fraud, contribution and/or indemnity against Ms. Torre in the nuisance action have unknown value, as the trustee has received no proof of their merits.

The value of the quiet title action against Ms. Torre is unknown and likely none as the judgment entered in the trespass action may have already resolved the issues in the quiet title action.

Also, the claims being compromised are quite complex both factually and legally, as they are the culmination of many years of disputes among the parties. And, the estate does not have the assets to fund litigation of the claims, while gambling on their outcome. Based on this, the court concludes that the settlement is equitable and fair.

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.

Finally, the court will approve the compromise as a sale. 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 is as is, where is, without any warranties or representations and subject to any encumbrances. The property being sold, *i.e.*, the appeal and claims of the debtors, are of unknown and potentially inconsequential value to

the estate. The sale will generate some proceeds for distribution to creditors of the estate. 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.

15. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO APPROVE COMPROMISE
MPD-3 — 5-19-14 [104]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and the City of Yreka, Mark Schmitt and Mary Frances McHugh on the other, resolving:

- a pre-petition public nuisance action brought by the City against the debtors,

- the claims in a cross-complaint the debtors filed against the City and others in the nuisance action, and

- a notice of claim the debtors filed against the City and some of its employees under Cal. Gov. Code §§ 910 and 910.2 on September 6, 2013.

This settlement does not resolve the claims in the debtors' dispute with Helena Torre, a neighbor, who obtained a pre-petition state court judgment against the debtors.

Under the terms of the compromise, the City will pay $15,000 to the estate. In exchange, the trustee will dismiss the claims against the City, Mark Schmitt and Mary Frances McHugh in the cross-complaint filed in the City's nuisance action. The trustee will also dismiss the September 6, 2013 notice of claim filed against the City.

In addition, the trustee will release the City, Mark Schmitt, Mary Frances McHugh and the City's employees from any claims that could be possibly brought with respect to a Third Notice of Violation the City will be recording with the Siskiyou County Recorder after the approval of this compromise. Such claims include quiet title, slander of title, and any requests for expungement of the Third Notice of Violation.

The parties will execute mutual releases, excluding claims of the City, Mark Schmitt and Mary Frances McHugh in a trespass action brought by Helena Torre, an appeal by the debtors of a judgment in the trespass action, a quiet title action brought by the debtors against Helena Torre, or a pending 11 U.S.C. § 523(a)(6) adversary proceeding by Helena Torre against the debtors.

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. The trustee has investigated the merits of the debtors' cross-claims in the City's nuisance action and has determined that they have uncertain value and questionable merits. The principal contentions in that action are that of violations by the debtors of the City's ordinances. The only potential for some recovery from among the debtors' claims is in a 42 U.S.C. § 1983 claim.

But, the value of that claim is unknown as the trustee has received no proof of the claim's merits. The viability of the September 6 notice of claim is also questionable as it is based on the debtors' 42 U.S.C. § 1983 claim and arises from the same series of events that took place among the debtors, Helena Torre and the City.

Also, the claims being compromised are quite complex both factually and legally, as they are the culmination of many years of disputes among the parties. And, the estate does not have the assets to fund litigation of the claims, while gambling on their outcome. Based on this, the court concludes that the settlement is equitable and fair.

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.

Finally, the court will approve the compromise as a sale. 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 is as is, where is, without any warranties or representations and subject to any encumbrances. The property being sold, *i.e.*, the claims of the debtors, are of unknown and potentially inconsequential value to the estate. The sale will generate some proceeds for distribution to creditors of the estate. 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.

16. 13-34876-A-7 DOUGLAS/LISA BALMAIN — AMENDED MOTION TO SELL
TAA-2 — 5-8-14 [51]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell free and clear of the liens of the California State Board of Equalization the estate's interest in an unsecured promissory note dated February 21, 2012 and executed by Mountain West Enterprises, L.L.C. The proposed buyers are the debtors and the proposed purchase price is $25,000.

The original balance on the note was $170,000. The current balance on the note is approximately $80,000. The first two years of the note term were interest free. Interest only payments were required starting February 21, 2014, at an annual interest rate of 3.5%. The note maturity date is February 21, 2020. The note has no pre-payment penalty.

The trustee has collected the February through April 2014 payments on account of the note and anticipates collecting the May and June 2014 payments.

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

than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The only encumbrance against the note is a $191,546.14 tax claim held by the State Board of Equalization. The SBE has consented to the sale with a 20% carve-out to the estate.

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) and 363(f)(2), given the consent to the sale by the SBE.

The court will approve the sale free and clear only of the SBE claim. The sale is in the best interests of the creditors and the estate.

17. 14-22787-A-7 JOSEPH EITZEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJS-1 — 5-6-14 [19]
COUNTY OF TEHAMA VS.

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

The movant, County of Tehama, seeks relief from stay under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4) as to two commercial real properties in Los Molinos, California. The debtor owns only a 50% interest in the property. The other 50% interest in the property is owned by Krishna Reddy. The property is the site for an "old motel" with 13 rooms. Schedule A.

The property has a value of $350,000 and it is encumbered by claims totaling approximately $1,759,080.67, consisting of:

- a tax lien for $37,385.89 held by the movant ($30,802.96 on APN 078-120-74-1 and $6,582.93 on APN 078-120-73-1),

- a judgment lien for $1,520.63 held by Butte County Credit Bureau (recorded 11/26/96),

- a judgment lien for $1,293,000 held by Betty Sheasgreen (recorded 8/2/02),

- a judgment lien for $417,012.77 held by George and Betty Harms (recorded 8/14/03),

- a judgment lien for $3,630.98 held by Citibank (recorded 9/2/03),

- a judgment lien for $6,006.20 held by Wells Fargo Bank (recorded in 2003), and

- a mechanics lien for $524.20 held by Dudleys Excavating, Inc. (recorded 11/14/08).

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

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit

the movant to conduct a tax sale consistent with California law and to permit the purchaser to take possession of the subject property consistent with applicable nonbankruptcy law.

Because the movant has not established that it is entitled to attorney's fees and costs for bringing this motion, such fees and costs will be denied.

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

Given the granting of prospective relief from stay under 11 U.S.C. § 362(d)(2), the court finds it unnecessary to address the request for relief under section 362(d)(1).

Relief under 11 U.S.C. § 362(d)(4) will be denied. The statute provides 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."

11 U.S.C. § 362(d)(4) was enacted to prevent debtors from using the automatic stay in a case to perpetrate the delay, hinder, or defraud of creditors.

The court will deny relief on the basis that there have been multiple bankruptcy filings affecting the subject property, given that the debtor's last bankruptcy filing was over 10 years ago, on February 25, 2004 (Case No. 04-21865-B-7), and given that the debtor did not claim to own any interest in the property in that case. As acknowledged by the motion, the property was brought into that bankruptcy estate post-petition, only after the trustee litigated the avoidance and recovery of the property. Adv. Proc. No. 06-2143, Docket 47 (June 28, 2007 judgment).

As the court has no evidence that the debtor used the automatic stay of the 2004 bankruptcy case to delay, hinder, or defraud creditors, the court will not consider the filing of that case as part of such a scheme under section 362(d)(4).

Further, the court is not persuaded that there have been transfers of all or part ownership of the property in an effort to perpetrate a scheme to delay, hinder, or defraud creditors within the meaning of section 362(d)(4). The motion makes little or no effort to identify transfers warranting 11 U.S.C. § 362(d)(4)(A) relief.

Based on the record before the court, the last transfer of the property took place by a judgment during the pendency of the debtor's 2004 bankruptcy case, avoiding his and his spouse's pre-2004 petition transfer of the property to their Guardian Angel Foundation. The avoidance of the transfer resulted in the debtor's 2004 bankruptcy estate recovering the property. Adv. Proc. No. 06-2143, Docket 47 (June 28, 2007 judgment).

The court has no evidence of transfers of the property by the debtors since the earlier case. Therefore, the filing of this petition cannot be part of a scheme to delay, hinder, or defraud creditors that involved the transfer of the property. There is no evidence of transfer of the property in conjunction with the filing of this petition.

11 U.S.C. § 362(d)(4) is limited to the petition being part of a scheme involving transfer of the property or multiple bankruptcy filings. The movant's complaints about the debtor allegedly urging his friends to sabotage the tax sale auctions and the debtor's filing of the quiet title action in May 2011 are not covered by section 362(d)(4). Such schemes, even if true - which the court is not deciding in connection with this motion - are irrelevant under section 362(d)(4) as they do not involve multiple filings and/or transfer of the property. Relief under section 362(d)(4) will be denied.

The findings of fact and conclusions of law with respect to the avoidance and recovery of the property by the bankruptcy estate in 2004 case state that the debtor and his spouse transferred the property to their Guardian Angel Foundation before filing the 2004 petition "with the actual intent to hinder delay or defraud a creditor of [the debtor and his spouse]." Adv. Proc. No. 06-2143, Docket 48 (June 28, 2007 findings and conclusions). The movant seems to argue that this conclusion warrants relief under section 362(d)(4). This court disagrees because that scheme did not involve the filing of the instant bankruptcy petition. It involved the filing of the 2004 petition. Section 362(d)(4) requires that the filing of the petition at hand be part of the scheme.

Finally, 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 L.L.C. (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

18. 14-20195-A-7 ROBERT/DENISE ROSSI — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 5-12-14 [21]
THE BANK OF NEW YORK MELLON VS.

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

The movant, The Bank of New York Mellon, seeks relief from stay under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4) as to real property in Vacaville, California.

The motion will be dismissed as moot to the extent it requests relief under section 362(d)(1) and (d)(2).

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 6, 2013, the debtors filed a chapter 13 case (case no. 13-27730). But, the court dismissed that case on October 3, 2013 due to the debtors' failure to timely file and confirm a plan. The debtors filed the instant case on January 9, 2014. The chapter 13 case then was pending within one year of the filing of

the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot with respect to section 362(d)(1) and (d)(2) because the automatic stay in the instant case expired in its entirety as to the subject property on February 8, 2014, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on February 8, 2014, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

The court will grant relief under section 362(d)(4), which provides 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."

This is the debtors' fifth bankruptcy case since December 1, 2009.

On December 1, 2009, the debtors filed a chapter 13 case (case no. 09-46334). It was dismissed on September 8, 2010 due to the debtors' failure to make plan payments.

On October 2, 2010, the debtors filed one more chapter 13 case (case no. 10-46391). It was dismissed on February 28, 2011 due to the debtors' failure to even commence plan payments.

On October 6, 2011, the debtors filed another chapter 13 case (case no. 11-44059). It was dismissed on January 25, 2012 due to the debtors' failure to make plan payments.

On June 6, 2013, the debtors filed yet another chapter 13 case (case no. 13-27730). It was dismissed on October 3, 2013 due to the debtors' failure to timely file and confirm a plan.

The debtors filed the instant case on January 9, 2014.

The subject real property was listed in the Schedule A of each of the above five bankruptcy cases. From the debtors' repeated filings of chapter 13 petitions, although they were unable to make payments pursuant to a chapter 13 plan, the court infers that the filing of this case was part of a scheme to

delay, hinder, or defraud creditors, and specifically the movant. The delay to the movant is obvious as the debtors have been attempting to complete a chapter 13 plan in four different chapter 13 cases in the last nearly four and one-half years.

The court will enter an order pursuant to 11 U.S.C. § 362(d)(4), granting prospective relief from stay under 11 U.S.C. § 362(d)(4). The court will lift the stay to permit the movant to obtain possession of the property in accordance with state law. The order shall be binding in any other case under this title purporting to affect the subject property, filed no later than two years after the date of entry of the order. See 11 U.S.C. § 362(d)(4).

No fees and costs are awarded because the movant has not established that it is an over-secured creditor. See 11 U.S.C. § 506. According to the movant, the property has a value of $285,000, whereas the encumbrances - consisting solely of the movant's mortgage - total $333,829.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived. No other relief will be awarded.

19. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO ABANDON
HSM-7 — 5-2-14 [142]

Tentative Ruling: The motion will be denied.

The trustee wishes to abandon the estate's interest in real property in Fair Oaks, California.

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 motion will be denied because the trustee has filed a motion to sell the same property the trustee is seeking to abandon. This indicates that the property is not of inconsequential value.

20. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO SELL AND PAY EXPENSES OF SALE ETC
HSM-8 — 5-21-14 [147]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell - as is, where is and with all faults - for $410,000 the estate's interest in real property in Fair Oaks, California to Lynn Gowen Companies, L.L.C. The trustee is also asking the court to approve the payment of a 4% real estate commission to the estate's broker. Although the agreement with the broker calls for a 6% commission, the instant purchase agreement provides that 2% of the real estate commission will be applied as credit in favor of the buyer toward the purchase price.

The property is subject to a first mortgage for approximately $266,529 and a second mortgage for approximately $79,000, both in favor of JPMorgan Chase Bank. The trustee is aware of no other claims secured by the property. In addition to the payment of the mortgages, the estate will pay one-half of the escrow fee; will pay for title insurance; will pay the recordation costs for the grant deed and other related costs, including the documentary transfer tax; will pay outstanding property taxes and assessments; will pay outstanding

utilities. The trustee will hold back also an estimated amount for the payment of state and federal transactional taxes.

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

The court will approve the payment of the 4% real estate commission - with the remaining 2% of the commission being applied to the purchase price - subject to one condition. The condition is that the real estate broker, who will be serving as real estate broker in this transaction to both the estate and the buyer, executes and files with the court a declaration of his disinterestedness with respect to the buyer.

21. 14-21730-A-7 TAMMY FIGUERA — CONTINUED MOTION TO ENFORCE 30 DAY STAY AND TO RESCIND UNLAWFUL EVICTION
3-5-14 [15]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from May 5, 2014 in order for the debtor to supplement the record with evidence of damages resulting from violation of the automatic stay by Jesbir Brar. An amended ruling from May 5 follows below.

As indicated in its scheduling order, the court construes this motion to seek relief under 11 U.S.C. § 362(k).

The debtor, Tammy Figuera, complains that Jesbir Brar violated the automatic stay when he evicted her from her home in Rocklin, California on March 4, 2014.

This case was filed on February 24, 2014. Mr. Brar admits to having evicted the debtor from the property on March 4, 2014. He argues, though, that there was no automatic stay preventing the eviction by virtue of 11 U.S.C. § 362(b)(22), which provides that:

"The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

. . .

subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor."

11 U.S.C. § 362(l) provides that:

"(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)
(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(I) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)
(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this

subsection, shall provide for the debtor to certify, and the debtor shall certify—

(I) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

© The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor."

Mr. Brar's contention that the appeal filed by the debtor on March 26, 2014 divests this court from jurisdiction to hear this matter is meritless because the debtor obviously has appealed nothing associated with this motion, which the court is only now adjudicating.

"The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and inept itude resulting when two courts are dealing with the same issue at the same time. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); [Marino v. Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 769 (B.A.P. 9th Cir. 1999)]; 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.32[1] (3rd ed. 1999). The trial court cannot take actions "over those aspects of the case involved in the appeal." Griggs, 459 U.S. at 58, 103 S.Ct. 400.

"The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the *order on appeal* because such supplementation would change the status quo. McClatchy Newspapers v. Central Valley Typographical Union, 686 F.2d 731, 734-35 (9th Cir. 1982)."

Hill & Sanford, L.L.P. v. Mirzai (In re Mirzai), 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999).

This motion was heard for the first time on May 5, 2014 and the court has not entered any orders on this motion.

More, the court cannot tell which order is being appealed by the March 26, 2014 notice of appeal. The court entered two orders prior to the notice of appeal and neither of them can be appealed - one is an order entered on February 24 authorizing the debtor to pay the filing fee in installments (Docket 7) and the other is an order entered on March 6 setting a hearing on a motion for recusal (Docket 19). Both orders were entered more than 14 days prior to the notice of appeal hence an appeal on March 26 of these orders would be untimely. See Fed. R. Bankr. P. 8002(a).

Thus, the court fails to see how the March 26, 2014 notice of appeal divested this court from jurisdiction to adjudicate this motion in the first instance.

Turning to the merits of the motion, 11 U.S.C. § 362(b)(22) does not apply to this case. That provision applies only to an "eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor." Mr. Brar is not a lessor of the debtor. He is not a lessor of anyone. Mr. Brar purchased the property at the foreclosure sale of the property, instituted by the debtor's husband's mortgagee.

If, however, the debtor leased or rented the property from the mortgagor, Mr. Brar might have succeeded to the rights of the mortgagor/lessor if the lease predated the foreclosing mortgage. This is unlikely. In Mr. Fagundes' adversary proceeding, Adv. No. 13-2261, the exhibits to the complaint reference a deed of trust that was entered into in 2005. In a 2011 bankruptcy case, 11-24940, Ms. Figuera's schedules included no reference to a lease or rental agreement on Schedule G, the schedule of executory contracts. Hence, it appears that the lease came after the foreclosing mortgage. Thus, any lease would have been extinguished in a foreclosure by an earlier in time mortgage.

Mr. Brar, nonetheless, argues that he is in privity of contract with the debtor by virtue of the Protecting Tenants at Foreclosure Act of 2009 (PTFA). The court rejects this argument. The PTFA provides:

"(a) IN GENERAL.--In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under state law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.--For purposes of this section, a lease or tenancy shall be considered bona fide only if-

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy."

Pub. L. No. 111-22, § 702(a)-(b), 123 Stat. 1632, 1660-62 (2009)(emphasis added); see also Southland Home Mortgage v. Valle (In re Valle), Case No. 10-15196-LT7, WL 722388, at *1, 4 (Bankr. S.D. Cal. Feb. 16, 2011) (providing that "[t]he Act allows renters to remain in a leasehold for the later of 90 days or the end of the lease term if, among other things, they entered into a lease prior to the date of a 'Notice of Foreclosure,'" and it "protects tenants who enter into bona fide leases prior to a 'Notice of Foreclosure'").

The court will assume, because Mr. Brar asserts the applicability of PTFA, that the foreclosure on the subject property was based on a federally-related mortgage loan.

Subsections 702(a)(1) and (a)(2)(B) do not apply because Mr. Brar did not provide the debtor with the 90-day notice contemplated by Section 702(a)(1) or at least there is no evidence that such notice was ever given by Mr. Brar to the debtor. Also, Mr. Brar could not have given the 90-day notice of Section 702(a)(1) to the debtor prior to the March 4 eviction because, as Mr. Brar's counsel admitted in open court at the May 5 hearing, he did not know the identity of the occupants on the property, other than Patrick Fagundes, the debtor's husband.

This leaves Section 702(a)(2)(A), which applies only if there is a "bona fide" lease. Section 702(b) of the PTFA defines a bona fide lease by excluding leases where the spouse of the mortgagor is a tenant. Pub. L. No. 111-22, § 702(b)(1), 123 Stat. 1632, 1660-62 (2009). As Mr. Brar is well aware by now, the debtor is the spouse of the mortgagor on the loan that served as basis for the foreclosure, Patrick Fagundes.

Section 702(a)(2)(A) of the PTFA does not apply here because Mr. Brar has not proven that the lease agreement between the debtor and Patrick Fagundes is a bona fide lease for purposes of the PTFA. As Mr. Brar is asserting the PTFA as a defense, he has the burden of persuasion on each element of the PTFA defense, including that the lease agreement between the debtor and Patrick Fagundes is bona fide for purposes of the PTFA.

He has not met this burden. Mr. Brar has not established that the debtor is not a spouse of the mortgagor, Patrick Fagundes, that the lease between the debtor and Patrick Fagundes was the result of an arms-length transaction, and that the lease required rent substantially less than fair market rent for the property.

The debtor stated at the May 5 hearing that under her rental agreement with her husband she paid for the household utilities and other expenses. The amount paid monthly varied and was in the range of $600 to $1,000 a month. The court is unconvinced that such rent constitutes fair market rent for a house or part of a house in Rocklin, California. Pub. L. No. 111-22, § 702(b)(3), 123 Stat. 1632, 1660-62 (2009).

Hence, because Mr. Brar did not lease property directly to the debtor, because the lease postdates the foreclosing mortgage, and because he did not succeed to the rights of a mortgagor/lessor under PTFA, section 362(b)(22) does not apply.

Further, 11 U.S.C. § 362(c)(4)(A) provides that (I) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request

of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

While the debtor filed two prior cases before filing this case, Case Nos. 11-24940-13-E and 11-35879-11-E, neither of those two cases "were pending within the previous year" before the instant case was filed. Case No. 11-24940-13-E was dismissed on May 4, 2011 and Case No. 11-35879-11-E was dismissed on July 27, 2011. Thus, 11 U.S.C. § 362(c)(4)(A) is inapplicable here.

The filing of the bankruptcy petition triggered an automatic stay that was fully applicable and protected the debtor and the debtor's possession interest in the subject property.

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."

Under 11 U.S.C. § 362(a)(3), the petition triggered an automatic stay that protected the debtor's possessory interest in the property, even if her possession amounted to a mere "squatter" status.

"A distinction exists between the analyses required for stay relief matters and violation of stay matters. In the former, the creditor is summarily attempting to establish a colorable claim in terms of an interest in a debtor's secured note or an interest in debtor's property. In considering the interest in debtor's property, an analysis is made as to the strength of debtor's interest vis-a-vis creditor's interest in the same property. Consequently, terms like "owner" and "squatter" appear. [Citation omitted] In the latter, the debtor is attempting to establish that the creditor is violating the automatic stay by taking some action against the debtor or against property of the estate. In this instance, the strength of one's interest is not determinative; but more importantly, if debtor or the estate has "any" interest the question becomes: is the creditor's action violative of the stay. Creditor's action may be violative even if a minimal interest, such as a squatter's or possessory interest, is held by the debtor or the estate."

Eden Place, L.L.C. v. Perl (In re Perl), Case No. CC-13-1328-KiTaD, WL 2446317, at *6 (B.A.P. 9th Cir. May 30, 2014) (citing to Di Giorgio v. Lee (In re Di Giorgio), 200 B.R. 664, 670 (C.D. Cal. 1996), *vacated on mootness grounds*, 134 F.3d 971 (9th Cir. 1998)).

In Perl - a case quite similar to the facts here - the court rejected the argument that a debtor-tenant has no legal or equitable interest in rented property once a judgment for possession has been entered in favor of the landlord. Perl at *7-8. "We conclude that . . . [the debtor's] physical

occupation of the Residence conferred a possessory interest under California law that was protected by the automatic stay." Perl at *9.

The same is true with respect to the debtor in this case. Her physical occupation of the Rocklin property was recognized as a possessory interest under California law, which interest was protected by the automatic stay under section 362(a)(3). The eviction took place on March 4, 2014, just eight days after this case was filed on February 24. The court sees no reason why the automatic stay did not apply when the debtor was evicted from the property.

The applicability of the automatic stay is even more apparent under section 362(a)(1) and (2) because "property of the estate" is not implicated under those subsections. Rather, section 362(a)(1) and (2) protects actions taken "against the debtor" only.

This leaves the question of whether there was willful violation of the stay.

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."

The "[d]ebtors ha[ve] the burden of proof under section 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. 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).

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. 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)).

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).

Mr. Brar obtained a judgment for possession of the property pre-petition, on September 27, 2013. By evicting the debtor from the property pursuant to that judgment on March 4, 2014, after the debtor had filed this case on February 24, 2014, Mr. Brar:

- was continuing the unlawful detainer action or proceeding commenced pre-petition against the debtor,

- was enforcing "against the debtor . . . a judgment obtained before the commencement of the case," and

- was exercising control over property of the estate, *i.e.*, the debtor's possessory interest in the property.

Accordingly, Mr. Brar violated the automatic stay of section 362(a)(1), (a)(2), and (a)(3), when he executed on the pre-petition judgment for possession.

Further, the violation was willful because Mr. Brar was aware of the automatic stay when he evicted the debtor but nonetheless proceeded with the eviction. The debtor presented Mr. Brar or his agents with a copy of the bankruptcy petition when Mr. Brar came to evict the debtor along with all other occupants of the property. Nevertheless, Mr. Brar proceeded with the eviction. In fact, as it became apparent at the May 5 hearing on this motion, Mr. Brar's counsel instructed the Sheriff to go forward with the eviction despite the filing of the bankruptcy case.

The court also notes that Mr. Brar does not deny anywhere in his papers that he knew of the automatic stay in this case when he evicted the debtor from the property.

And, a good faith belief that 11 U.S.C. § 362(b)(22) applied is not material. 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 violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Id.

To the extent there is doubt that Mr. Brar knew of the bankruptcy prior to the eviction, he knew of it shortly thereafter, yet he did nothing to restore possession to the debtor when learning of the bankruptcy. Having evicted the debtor in violation of the automatic stay, the creditor had an obligation to restore the status quo. See Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1213-15 (9th Cir. 2002). That is, upon discovering that the debtor's petition predated the eviction, the creditor was required to put the debtor back in possession of her home. The creditor did not. At a minimum, this alone is a willful violation of the automatic stay.

Finally, the court will address the debtor's request for damages.

The purpose of continuing the hearing on the motion to June 16 was to allow the debtor to produce evidence of damages resulting from the stay violation. In its May 5 ruling the court mandated that:

"The court will continue the hearing on the motion to June 16, 2014 at 10:00 a.m. The debtor shall file and serve evidence of damages resulting from the violation of the automatic stay no later than June 2, 2014. The debtor shall also file with the court no later than June 2, 2014 a certificate of service

demonstrating that her evidence was served by U.S. Mail on Mr. Brar's attorney. The evidence from the debtor shall include but not be limited to declaration(s) executed under the penalty of perjury. Any reply from Mr. Brar shall be filed and served no later than June 9, 2014. Mr. Brar shall also file no later than June 9, 2014 a certificate of service evidencing that the reply was served by U.S. Mail on the debtor."

Docket 59 at 5.

The debtor filed additional papers on May 29, 2014, asking for:

- $1.825 million in "[e]conomic damages and loss,"

- $50,000 in "[n]on-economic damages,"

- $250,000 in "[p]unitive damages,"

- attorney's fees and costs,

- "an order that Brar . . . take action to set aside the eviction Judgment and Order . . . or alternatively, . . . order restoring possession to the debtor," and

- "an order in the alternative reforming the Grant Deed in favor of debtor's name forthwith with all rights of possession under a new Grant Deed to debtor and for an order quieting title in debtor's name."

Docket 61 at 5-6.

The time period for the damages purportedly incurred by the debtor is limited to the period between March 4, 2014, the date of the eviction, and April 28, 2014, the date this bankruptcy case was dismissed. The debtor is not entitled to damages after the April 28 dismissal because the writ of possession became enforceable against the debtor after that date, given the dissolution of the stay upon dismissal. See 11 U.S.C. § 362(c)(2)(B).

First, the court will deny the request for restoring possession of the property to the debtor. It is up to the state court to determine whether the debtor is entitled to possession of the property. This case was dismissed on April 28, 2014 and this court no longer has jurisdiction over anything other than adjudicating the stay violation. This court is ruling only that the enforcement of the writ of possession against the debtor - whether or not she had right to possession of the property - violated the automatic stay.

Second, it is up to the state court to determine whether setting aside its eviction judgment is warranted. Importantly, that judgment was not entered against the debtor as she was not named in the unlawful detainer action. The judgment was entered against her husband, Patrick Fagundes. "Mr. Brar could not have given the 90-day notice of Section 702(a)(1) to the debtor prior to the March 4 eviction because, as Mr. Brar's counsel admitted in open court at the May 5 hearing, he did not know the identity of the occupants on the property, other than Patrick Fagundes, the debtor's husband." Docket 59 at 4.

More important, "Mr. Brar obtained [the] judgment for possession of the property pre-petition, on September 27, 2013." Docket 59 at 5.

Entry of the judgment for possession then did not violate the stay. It was only when Mr. Brar decided to enforce the writ of possession against the debtor

as an unnamed occupant of the property - post-petition - that he violated the stay.

Third, the court will deny the request for "reforming the grant deed in favor of debtor's name . . . and quieting title in debtor's name." This is a motion for violation of the automatic stay. Granting any other relief goes well-beyond the relief requested in the motion. Also, the reformation of a deed and the quieting of title require an adversary proceeding. See Fed. R. Bankr. P. 7001(2). Additionally, as mentioned above, this case was dismissed on April 28, 2014, meaning that this court no longer has jurisdiction over any causes of action pertaining to the debtor.

Fourth, the court will deny the request for attorney's fees and costs as the debtor is representing herself in this matter. The debtor is not represented by an attorney.

Pro se litigants are not entitled to attorney's fees, even when the pro se litigant is an attorney. See Elwood v. Drescher, 456 F.3d 943, 947-48 (9th Cir. 2006) (citing Kay v. Ehrler, 499 U.S. 432 (1991), which holds that pro se attorney litigants are not entitled to attorney's fees in the successful litigation of civil rights claims). Elwood has recognized that the rule in Kay has been applied to other areas, including 17 U.S.C. § 505, Rule 11, and 28 U.S.C. § 1927. Elwood at 947. As a result, Elwood has ruled "that Kay imposes a general rule that pro se litigants, attorneys or not, cannot recover statutory attorneys' fees." Id.

Fifth, the court will deny the request for $1.825 million in "[e]conomic damages and loss." The pleading filed by the debtor does not itemize any economic damages. Docket 61 at 4. The pleading refers only to "[e]xpense of moving her residence in the total sum of $32,000." Docket 61 at 4. But, the pleading does not itemize this figure.

The attachments to the pleading are not helpful either. Docket 61. The debtor has attached the following to the pleading:

- a March 28, 2014 contract for seemingly the lease of an apartment, entered into between Willow Creek Diversified, on one hand, and the debtor and Patrick Fagundes, on the other hand; the base rent is $950 a month;

- a March 9, 2014 veterinary clinic bill for $436 of which $399.76 was paid;

- a May 1, 2014 bill from DISH for $437.75, covering service at the Rocklin property ($251.73 of the bill - covering April 10, 2014 through May 9, 2014 - is subtracted; only the remainder $186.02 is due, presumably for services rendered prior to April 10);

- an April 16, 2014 garbage pick-up service bill for $122.56 from Recology Auburn Placer, covering service at the Rocklin property from April 1, 2014 through June 30, 2014;

- a March 25, 2014 water bill with a credit balance from Placer County Water Agency, covering service at the Rocklin property from January 16, 2014 through March 18, 2014 (the bill is only partially copied and submitted into the record; the court is unable to view a small portion of the right side of the bill that contains most of the figures in the bill);

- a June 2, 2014 bill from PG&E for $25.79, covering service at the Rocklin property;

- a five-page printout from someone's Citibank online bank account, listing numerous debits and deposits;

- four pages from a Citibank account statement covering the period of April 23, 2014 through May 22, 2014, listing numerous debits and deposits;

- four pages from a Citibank account statement covering the period of March 24, 2014 through April 22, 2014, listing numerous debits and deposits; and

- six pages from a Citibank account statement covering the period of February 24, 2014 through March 23, 2014, listing numerous debits and deposits.

Docket 61.

There is no explanation by the debtor about why or how the foregoing attachments represent damages resulting from Mr. Brar's stay violation. The debtor has not explained the relationship or relevance between the foregoing expenses and her eviction from the Rocklin property on March 4, 2014.

For instance, the court is uncertain about why a veterinary clinic bill should be considered in the award of stay violation damages. The pleading does not explain why the court should award damages to the debtor based on the lease of an apartment by Patrick Fagundes and the debtor, when there was no stay violation as to the eviction of Mr. Fagundes and Mr. Fagundes is the debtor's husband. The debtor does not say whether and to what extent she has been actually paying rent for the apartment. The fact that the debtor was paying Patrick Fagundes rent for her to live at the Rocklin property begs the question of whether and how much she is paying for the apartment the two of them are supposedly renting.

More, the court required the debtor to submit a declaration to support her request for damages. "The evidence from the debtor shall include but not be limited to declaration(s) executed under the penalty of perjury." Docket 59 at 5.

The debtor has filed no declaration establishing the damages she has requested or the damages that are purportedly in the attachments to her pleading. Docket 59 at 5; see e.g., Fed. R. Evid. 603, 802, 901(a).

In any event, even if the court had adequate explanation of the attachments to the debtor's pleading and the attachments had been substantiated by a declaration from the debtor, the attachments are not even close to the requested $1.825 million in economic damages. The $1.825 million in economic damages will be denied.

Lastly, because the debtor has not given the court evidence of what was the reasonable value of her use and possession of the Rocklin property, the court would have been inclined to consider her cost of obtaining replacement housing.

However, the only evidence of replacement housing cost is the March 28 lease of an apartment with Patrick Fagundes. As mentioned above, such evidence is inadmissible. It is not authenticated and it is hearsay. See Fed. R. Evid. 802 & 901(a). There is no declaration curing these defects in the evidence.

And, Mr. Brar has objected to the admissibility of all of the debtor's evidence. Docket 63.

Sixth, the $50,000 in non-economic damages will be denied for the same reason

the court is denying the $1.825 million in economic damages. The debtor does not explain how or why she has sustained $50,000 in non-economic damages. She states that she has suffered "[u]pset, emotional distress, nausea, vomiting, headaches, stomach pain lasting to the present . . ., grief, humiliation, mortification,[] loss of consortium with her spouse,[] nightmares, cold sweats, dizziness,[] depression and similar symptoms continuing."

The debtor has not executed a declaration under the penalty of perjury, confirming the above issues and has not explained when, how or why she came to have the foregoing symptoms.

Moreover, assuming the debtor has indeed had the above symptoms, there is no evidence from a medical professional establishing that the debtor's symptoms were caused by the March 4 eviction from the Rocklin property.

Fed. R. Evid. 701 provides that "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

© not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

As the debtor has not been qualified as an expert in the area of specialized medical knowledge, she is not qualified to render an opinion that is based on medical scientific knowledge, *i.e.*, whether her symptoms were caused by the eviction. She is also not qualified to render other medical opinions, such as diagnosis. Depression, for instance, is a form of medical diagnosis that requires specialized knowledge by the declarant. The debtor's assertion then that she has been suffering from depression cannot be admitted as a lay opinion.

Further, Fed. R. Evid. 702 provides that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the <u>testimony is based on sufficient facts or data</u>;

© the <u>testimony is the product of reliable principles and methods</u>; and

(d) the <u>expert has reliably applied the principles and methods to the facts</u> of the case."

Thus, even if the debtor had been qualified as an expert, the court does not have any evidence or statements indicating the basis for her opinions. Her opinions are inadmissible under Fed. R. Evid. 701 and 702. The request for $50,000 in non-economic damages will be denied.

Seventh, the request for $250,000 in punitive damages will be denied. 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. Provident Life & Acc. Ins. Co. v. O'Connor, Case No. 00-55657, WL 460287, at * 3 (9th Cir. Feb. 13, 2002); Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984).

As the court is thus far unable to award any compensatory damages due to the lack of admissible evidence from the debtor, $250,000 in punitive damages is not appropriate. Such sum is well beyond reason. A more reasonable punitive damages award - in light of the residential eviction, the lack of admissible evidence of compensatory damages and the wealth of Mr. Brar - would be $3,000.

Accordingly, the court will award $3,000 in total damages to the debtor. Such damages shall be paid by Mr. Brar to the debtor no less than seven days after entry of the order on this motion. Mr. Brar shall pay the damages to the debtor by cashier or personal check, made payable to the debtor, to be sent to an address to be provided by the debtor at the June 16 hearing on this motion. The motion will be granted in part.

FINAL RULINGS BEGIN HERE

22. 11-38003-A-7 RICHARD/KRISTINA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
WSH-1 — 5-23-14 [136]
ERIC TYE VS.

Final Ruling: The movant has provided only 24 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

23. 13-30311-A-7 KATHERINE GERRARD — MOTION FOR ORDER MODIFYING ORDER REOPENING CASE TO PROVIDE FOR APPOINTMENT OF A TRUSTEE
UST-1 — 5-8-14 [91]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 U.S. Trustee asks the court to amend its March 12, 2014 order reopening the case to direct the appointment of a trustee, given that since the reopening of the case the debtor has filed an adversary proceeding for stay violations against property of the estate during the pendency of the bankruptcy case.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

This motion has been brought within reasonable time given that the order in question was entered only on March 12, 2014 (Docket 86), only 57 days prior to the filing of this motion on May 8.

The court agrees with the movant. The appointment of a trustee is necessary to investigation whether the estate has an interest in the automatic stay violation claims. Accordingly, the court will modify its March 12, 2014 order to provide for the appointment of a trustee under Rule 60(b)(6). The motion will be granted.

24. 13-35811-A-7 RICHARD WILLIAMS — MOTION TO AVOID JUDICIAL LIEN
CLR-3
VS. TRIDENT INVESTMENT CORPORATION — 5-12-14 [35]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service: "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 John Clay Reeves as agent for service of process for Trident Investment Group, Inc. dba Trident Investment and Realty Group, per Trident Investment Group, Inc.'s profile with the California Secretary of State.

However, the respondent judgment creditor's name is not Trident Investment Group. It is Trident Investment Corporation. Docket 37, Attachment. The court has no evidence that Trident Investment Corporation is the same as Trident Investment Group, Inc. In fact, solely based on their names, Trident Investment Corporation is not the same as Trident Investment Group, Inc. The judgment creditor Trident Investment Corporation, whose dba is Trident Property Management, appears to be a property management company, whereas Trident Investment Group, Inc. is an investment company.

More, even assuming that Trident Investment Corporation is the same as Trident Investment Group, Inc., the profile of Trident Investment Group, Inc. with the California Secretary of State indicates that Trident Investment Group, Inc.'s powers, rights and privileges were forfeited in California. Thus, the court cannot be certain that Mr. Reeves is still an agent for service of process for Trident Investment Group, Inc.

And, while the debtor served the motion papers at two other addresses, including on Trident Investment Corporation, neither of those notices were addressed as prescribed by Fed. R. Bankr. P. 7004(b)(3). Those notices were not addressed to "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." The notice on Trident Investment Corporation was not addressed to anyone. Docket 42.

Finally, once again, even though the debtor has served Anthony Galyean, counsel for the respondent, unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

25. 14-24612-A-7 ROBERT WILBUR — AMENDED MOTION TO DISMISS CASE
LLL-1 — 5-6-14 [12]

Final Ruling: The motion will be dismissed without prejudice because it was not served on all creditors as required by Fed. R. Bankr. P. 2002(a)(4). The proof of service for the motion (Docket 14) does not identify any of the creditors listed on the master address list (Docket 3).

26. 14-23626-A-7 CANDICE MATTHEWS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 5-16-14 [17]
TD AUTO FINANCE, L.L.C. VS.

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

The motion will be granted.

The movant, TD Auto Finance, seeks relief from the automatic stay with respect to a 2012 Nissan Altima. The movant has produced evidence that the vehicle has a value of $17,950 and its secured claim is approximately $28,208.

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 court also notes that the trustee filed a report of no distribution on May 14, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

27. 13-30835-A-7 RICK HENDRICKS — MOTION FOR TURNOVER OF PROPERTY
PA-3 — 5-19-14 [44]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and any other party in interest to file written opposition at least 14 days prior to the

hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee asks the court to order the debtor to turn over to the trustee $40,500 the debtor received post-petition as inheritance from his interest in The 2007 Hendricks Family Trust.

11 U.S.C. § 541(a) provides that:

"(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

. . .

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance."

11 U.S.C. § 521(a)(4) prescribes the following obligations on the debtor:

"(a) The debtor shall—

. . .

(4) if a trustee is serving in the case or an auditor is serving under section 586 (f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title."

11 U.S.C. § 542(a) also requires parties holding property of the estate to "deliver to the trustee, and account for, such property or the value of such property."

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).

If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v.

Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

"If a debtor demonstrates that [he] is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman at 202 (quoting Rynda v. Thompson (In re Rynda), Case Nos. NC-11-1312-HDoD, 09-41568, 2012 WL 603657, at *3 (B.A.P. 9th Cir. Jan. 30, 2012)).

This case was filed on August 16, 2013. The initial meeting of creditors was held on September 25, 2013. The meeting was continued to October 9, 2013. The trustee filed a report of no distribution on October 23, 2013.

In his Schedule B, the debtor listed a 25% still not vested beneficial interest in The 2007 Hendricks Family Trust. The scheduled value of the interest is "unknown".

The debtor received his chapter 7 discharge on December 2, 2013. The case was closed on December 6, 2013.

On December 23, 2013, the U.S. Trustee filed a motion to reopen the case. The court entered an order reopening the case the same day. Docket 22. After a trustee was appointed, a notice of assets was filed.

The debtor's counsel filed a motion to withdraw as counsel due to the debtor's failure to inform him of the November 16, 2013 passing away of his mother, who was a settlor and the trustee of the subject trust. Docket 39 at 2. The court granted the motion to withdraw by an order entered on February 20, 2014. Docket 40.

The trustee discovered the passing away of the debtor's mother and the vesting of the debtor's beneficial interest in the trust in a December 10, 2013 telephone call from a creditor in the case. Docket 20.

On January 8, 2014, the debtor personally delivered a cashier check payable to the trustee to the trustee's counsel. Prior to his withdrawal from the case, the debtor's counsel informed the trustee that the debtor "had spent the remainder of the distributions received from the [t]rust." Docket 46 at 3.

The debtor emailed the trustee's counsel on May 9, 2014, apprising her that he would be selling real property in San Jose, California in order to pay "any funds owed." Docket 44 at 6.

The trustee has asked for turnover of the inheritance proceeds, *i.e.*, "the Debtor to turnover [*sic*] to the Trustee, the $40,500 in distributions received." Docket 44 at 8. As explained by the motion, however, the debtor has spent the inheritance proceeds, other than what he turned over to the trustee. As such, the court cannot order turnover of those proceeds. Instead, it must enter an order for the value of the proceeds not turned over to the trustee.

28. 14-23138-A-7 AGUILAR ESPIRIDION — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 4-29-14 [13]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii)

is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Federal National Mortgage Association, 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 November 15, 2013, the debtor filed a chapter 13 case (case no. 13-34635). But, the court dismissed that case on December 3, 2013 due to the debtor's failure to timely file documents, including the plan, the means test form, schedules A through J and the statement of financial affairs.

The debtor filed the instant case on March 28, 2014. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on April 27, 2014, 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 April 27, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

29. 12-41741-A-7 RAR ENTERPRISES L.L.C. — MOTION TO APPROVE COMPENSATION FOR TRUSTEE'S ATTORNEY
HSM-3 — 5-19-14 [151]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further,

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

The motion will be granted.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $16,032.75 in fees (reduced by $5,000) and $91.00 in expenses, for a total of $16,123.75. This motion covers the period from May 31, 2013 through June 16, 2014. The court approved the movant's employment as the trustee's attorney on June 6, 2013. In performing its services, the movant charged hourly rates of $295, $300, $380 and $390.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) investigating and analyzing the debtor's assets, (2) negotiating with the restaurant landlord over its large administrative rent claim, (3) negotiating the sale of the debtor's liquor license and restaurant equipment to the landlord, (4) preparing and filing motion to sell and approve compromise, (5) negotiating with the SBE over its hold on the liquor license, (6) advising the trustee about the general administration of the estate, and (7) preparing and filing employment and compensation motions.

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

30. 12-41741-A-7 RAR ENTERPRISES L.L.C. MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
KJH-2 5-13-14 [145]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,414.50 in fees and $122.03 in expenses, for a total of $1,536.53. This motion covers the period from March 14, 2014 through May 7, 2014. The court approved the movant's employment as the estate's accountant on March 18, 2014. In performing its services, the movant charged an hourly rate of $345.

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.

31. 05-36844-A-7 STACEY STREETER — MOTION TO EMPLOY SPECIAL COUNSEL
DNL-3 — 5-19-14 [41]

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 is asking the court to employ nunc pro tunc as special counsel Chaffin Luhana, L.L.P., the law firm which represented the debtor in now-settled personal injury litigation. The proposed effective employment date is February 19, 2010.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The debtor did not disclose the litigation when this case was filed on October 14, 2005 because she was apparently not aware of her interest in the claims against the defendant. After the debtor received chapter 7 discharge on February 6, 2006, the case was closed on February 20, 2006. The case was reopened on February 5, 2014 pursuant to a motion brought by the U.S. Trustee.

The personal injury action in question was commenced on November 2, 2011. Various tort claims were asserted by the debtor. The debtor and C&L were not aware of the estate's interest in the claims until after a settlement was reached. C&L discovered the instant bankruptcy filing and promptly contacted the trustee to apprise him of the litigation and settlement.

The court is satisfied with the trustee's and C&L's explanation about why the estate failed to obtain prior court approval of C&L's employment.

C&L provided valuable services for the estate, as it litigated the personal injury claims, eventually leading to a settlement agreement with the defendant, generating $206,878.31 in settlement proceeds. The debtor's exemption is $37,775; the fees for the class counsel, C&L are $67,148.11; the expenses for C&L are $5,413.84; the fees for the settlement administrator, Garreston Resolution Group, are $2,175; the expenses for GRG are $167.55; and $62,063.49 will be held back by the defendant to satisfy eventual medical liens. The settlement will net $32,135.32 for the estate, whereas the unsecured claims total approximately $13,000.

The trustee has satisfied the nunc pro tunc approval standard under THC Financial. C&L's employment will be approved retroactively to February 19, 2010 on a 33.3% contingency fee basis, with the fee to be deducted after C&L is reimbursed for its advanced costs. The employment will be approved.

32. 05-36844-A-7 STACEY STREETER — MOTION TO APPROVE COMPENSATION FOR SPECIAL COUNSEL
DNL-4 — 5-19-14 [46]

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.

Chaffin Luhana, L.L.P., special counsel for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of $67,148.11 in fees and $5,413.84 in expenses, for a total of $72,561.95. The compensation relates solely to services provided in a personal injury litigation brought by the debtor approximately five and one-half years after this case was closed originally. The services were provided between February 19, 2010 and February 24, 2014. The requested compensation is based on a one-third contingency fee basis.

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."

C&L's services consisted, without limitation, of: conducting extensive discovery, including taking depositions, reviewing medical records and reviewing other documents, etc.; preparing for and attending Steering Committee meetings; preparing for and attending many hearings and status conferences; preparing the complaint; participating in extensive settlement negotiations; reviewing and finalizing the settlement.

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.

33. 05-36844-A-7 STACEY STREETER
DNL-5

MOTION TO
EMPLOY SETTLEMENT ADMINISTRATOR
5-19-14 [51]

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

The motion will be granted.

The trustee is asking the court to employ Garretson Resolution Group, Inc., nunc pro tunc, as a settlement administrator for the estate, pertaining to the now-settled personal injury litigation filed nearly five and one-half years after the case was originally closed on February 20, 2006. The proposed effective employment date is June 11, 2012. The trustee is also seeking approval of GRG's compensation.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The debtor did not disclose the litigation when this case was filed on October 14, 2005 because she was apparently unaware of her interest in the claims against the defendant. After the debtor received the chapter 7 discharge on February 6, 2006, the case was closed on February 20, 2006. The case was reopened on February 5, 2014 pursuant to a motion brought by the U.S. Trustee.

The personal injury action in question was commenced on November 2, 2011. Various tort claims were asserted by the debtor. The debtor was not aware of the estate's interest in the claims until after a settlement was reached. The attorney representing the debtor in the litigation discovered the instant bankruptcy filing and promptly contacted the trustee to apprise him of the litigation and settlement.

The court is satisfied with the trustee's explanation about why the estate failed to obtain prior court approval of GRG's employment.

GRG provided valuable services to the estate, including generally administering the settlement proceeds in the "mass plaintiff" personal injury action, of which both the debtor and the estate have benefitted.

The settlement of the litigation generated $206,878.31 in gross settlement proceeds for the debtor. The debtor's exemption is $37,775; the fees for the class counsel, C&L are $67,148.11; the expenses for C&L are $5,413.84; the sought fees for the settlement administrator, GRG, are $2,175; the expenses for GRG are $167.55; and $62,063.49 will be held back by the defendant to satisfy medical liens. The settlement will net $32,135.32 for the estate, whereas the unsecured claims total approximately $13,000.

The trustee has satisfied the nunc pro tunc approval standard under THC Financial. GRG's employment will be approved retroactively to June 11, 2012. The employment will be approved.

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."

GRG's services consist of:

- resolving the healthcare liens placed on the settlement proceeds, investigating each lien, securing the underlying claim for each lien, auditing each claim, disputing improper charges, and securing reimbursement for the claim; GRG is seeking approval of a flat fee of $1,075 for these services;

- generally administering the settlement proceeds in the "mass plaintiff" personal injury action, including the settlement proceeds to the debtor; GRG is seeking approval of a flat fee of $150 for these services;

- managing coordination with the bankruptcy estate; GRG is seeking approval of a flat fee of $950 for these services.

In addition, GRG is seeking reimbursement of $167.55 in expenses, including the cost for the preparation and postage for disbursement packets, checks and communications with the trustee, the debtor and others, and including a maintenance fee for a Qualified Settlement Fund that holds the settlement proceeds until disbursement is authorized.

The compensation represents ongoing services from June 11, 2012 until the present.

The court concludes that the $150 flat fee for the general administration of the settlement proceeds, the healthcare lien fee, and the bankruptcy coordination fee are reasonable and necessary. The services the fees represent have benefitted the estate and the debtor as they are one of the recipients of proceeds from the settlement of the debtor's claims.

According to the motion, the estate will receive approximately $32,135.32 from the gross settlement proceeds, aside from the funds held back by the defendant. Because the $32,135.32 that are to be received by the estate are sufficient to satisfy the approximately $13,000 in general unsecured claims, the estate will not be receiving any of the funds held back for the satisfaction of the healthcare liens. Funds not paid to satisfy healthcare liens will be remitted to the debtor and not the estate.

34. 14-23951-A-7 ERIC VOTAW
RCO-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-15-14 [12]

Final Ruling: This motion for relief from the automatic stay has been set for

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to real property in Milford, Pennsylvania. The property has a value of $350,000 and it is encumbered by claims totaling approximately $456,323. The movant's deed is in first priority position and secures a claim of approximately $386,323.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

35. 13-32852-A-7 LINDA ROGERS — MOTION TO AVOID JUDICIAL LIEN
DRE-2
VS. SAFE CREDIT UNION — 5-14-14 [37]

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 Safe Credit Union for the sum of approximately $8,760. The abstract of judgment was recorded with Placer County on January 28, 2013. That lien attached to the debtor's residential real property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $282,988 as of the date of the petition. The unavoidable liens total

$267,147.50 on that same date, consisting of a mortgage for $255,319.25 in favor of Chase Bank and another mortgage for $11,828.25 in favor of CalHFA. The debtor claimed an exemption of $15,840.50 in Schedule C.

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

36. 14-24157-A-7 MICHELLE FALLON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 5-12-14 [11]
BANK OF AMERICA, N.A. VS.

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

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

The movant, Bank of America, seeks relief from stay as to real property in Folsom, California.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On May 9, 2011, the debtor filed a chapter 13 case (case no. 11-31479) along with Michael Fallon. That case was dismissed on August 13, 2013. On August 23, 2013, the debtor filed another chapter 13 case (case no. 13-31137) with Michael Fallon. That case was dismissed on January 30, 2014. The debtor filed the instant chapter 7 case on April 23, 2014.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, the motion will be dismissed as moot, as the automatic stay did not go into effect upon the filing of the instant case on April 23, 2014.

Nevertheless, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on April 23, 2014. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

37. 14-20960-A-7 JOSE BACATAN
VVF-1
AMERICAN HONDA FINANCE CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-15-14 [14]

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

The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2011 Honda Civic vehicle.

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

The petition here was filed on January 31, 2014 and a meeting of creditors was first convened on March 12, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 2. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on March 2, 2014, 30 days after the petition date.

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

U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on April 13, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on March 2, 2014.

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

38. 14-21165-A-7 JOHN O'LEARY — MOTION TO AVOID JUDICIAL LIEN
LBG-1
VS. CITIBANK, N.A.
5-9-14 [13]

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 Citibank for the sum of $14,738.39 on March 10, 2011. The abstract of judgment was recorded with Placer County on June 27, 2011. That lien attached to the debtor's residential real property in Colfax, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $260,000 as of the date of the petition. The unavoidable liens total $192,088 on that same date, consisting of a mortgage for $142,195 in favor of Wells Fargo Bank and another mortgage for $49,893 in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Amended Schedule C. Docket 12.

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).

39. 12-37771-A-7 SHERRY OWENS
PD-1
CITIMORTGAGE, INC. VS

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-14-14 [19]

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, Citimortgage, Inc., seeks relief from the automatic stay as to real property in Magalia, California.

Given the entry of the debtor's discharge on February 4, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362©. 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 $204,653 and it is encumbered by claims totaling approximately $317,516. The movant's deed is in first priority position and secures a claim of approximately $279,832.

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 14, 2014.

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

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

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

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

40. 13-31272-A-7 CALVIN/ROBYN DILES — MOTION TO ABANDON
BHS-3 — 5-15-14 [37]

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 real property in Suisun City, California. The property is over-encumbered.

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 seeks to have the property abandoned because he believes there is no equity in the property. Specifically, he relies on and references a recent relief from the automatic stay motion that included evidence that the property has negative equity of $550,870. See Dockets 32, 27 at 2, 30 at 4. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

41. 14-22680-A-7 RICKY/JENIFER CABANISS — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 5-16-14 [18]
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS.

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

The motion will be granted.

The movant, Wilmington Savings Fund Society, F.S.B., seeks relief from the automatic stay as to real property in Stockton, California. The property has a value of $167,637 and it is encumbered by claims totaling approximately $224,591. 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. And, the debtor has indicated in the statement of intention 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.

42. 14-21087-A-7 MONICO MALLARI — MOTION TO EXTEND DEADLINE 5-16-14 [16]
ANF-2

Final Ruling: This motion has been voluntarily dismissed by the movant.

43. 13-28491-A-7 JAMES ENGLISH — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-6-14 [83]
LET-2
FIRST HORIZON HOME LOANS VS.

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

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

The movant, First Horizon Home Loans, seeks relief from the automatic stay as to real property in Rocklin, California.

Given the entry of the debtor's discharge on March 28, 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 property has a value of $600,000 and it is encumbered by claims totaling approximately $779,988. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no

evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

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

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

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

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

44. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-9
VS. A&A READY MIXED CONCRETE, INC. — 5-16-14 [102]

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 David Burkhart in favor of A&A Ready Mixed Concrete, Inc., for the sum of $12,661.74 on November 15, 2010. The abstract of judgment was recorded with Sacramento County on January 20, 2011. That lien attached to the debtors' residential real property in Elk Grove, California (Mooney Road).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $320,000 as of the date of the petition. The unavoidable liens total at least $472,000 on that same date, consisting of a $300,000 IRS lien on the property and a mortgage for $172,000 in favor of Select Portfolio Servicing. 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.

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).

45. 14-21194-A-7 CRISTINA DUNCA — MOTION TO AVOID JUDICIAL LIEN
OAG-3
VS. CAPITAL ONE BANK — 5-9-14 [25]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.