UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 30, 2014 at 10:00 a.m.

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

2, 5, 8

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 28, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 14, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 21, 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. 08-37910-A-7 MARK JOCOY — MOTION FOR TURNOVER OF PROPERTY
DNL-7 — 5-27-14 [101]

Tentative Ruling: The motion will be granted.

The trustee asks the debtor to turn over $11,800 in rental proceeds the debtor collected from his one-half ownership interest in a condominium in Mexico.

The debtor opposes the motion, arguing that he no longer has the rental proceeds sought by the trustee because he used them to pay expenses associated with the condominium, including HOA fees, maintenance, utility charges, assessments, taxes, repairs, management expenses, and travel expenses.

The trustee has filed a reply, contending that even if the debtor paid expenses associated with the condominium from the rental proceeds, the expenses would not have been incurred had the debtor disclosed the condominium when he filed this case.

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)).

The rental proceeds sought by the trustee represent $500 a month in rent collected from June 2009 to April 2010 and $450 a month in rent collected from January 2011 to February 2012.

The condominium was not disclosed when this case was filed on December 4, 2008. The case was closed on March 20, 2009, with a report of no distribution filed on January 20, 2009. The debtor received his discharge on March 12, 2009.

On April 3, 2012, the debtor filed a motion to reopen the case to schedule the condominium and two other assets. Docket 41. The case was reopened on April 11, 2012.

In spite of the case closure following a report of no distribution, the condominium continued to be property of the estate. 11 U.S.C. § 554(c) provides that only property scheduled and not administered is automatically abandoned upon case closure.

11 U.S.C. § 554(c) states: "Unless the court orders otherwise, any property scheduled under section 521 (a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

As the condominium was not scheduled and not administered upon closure of the case on March 20, 2009, it was not abandoned when the case was closed. The condominium remained property of the estate, as were the rental proceeds being generated from operation of the condominium. See 11 U.S.C. § 541(a)(6).

The debtor has produced no admissible or corroborating evidence that he has utilized the rental proceeds in question to pay expenses associated with the condominium. The opposition is devoid of admissible evidence, such as a declaration, establishing the factual assertions in the opposition. See Docket 106. Given this, the court will order the debtor to turn over to the estate the rental proceeds or their value.

2. 11-49912-A-7 GINA FLAHARTY — MOTION TO APPROVE COMPROMISE 5-30-14 [142]
DNL-9

Tentative Ruling: The motion will be granted in part.

The trustee requests authority to make an offer of compromise under Cal. Civ.

Proc. Code § 998 to Pearson & Pearson APC, former counsel for the debtor. Also, in the event the offer is accepted, the trustee asks the court to approve the compromise without the necessity for further court order.

The debtor and her corporation Travel Med, Inc., are the judgment debtors in state court litigation brought by Passport Health, Inc., which has filed a proof of claim in this case for $635,593.70, including the judgment amount, post-judgment interest, and $157,110.18 in trademark infringement damages awarded solely against Travel Med and not the debtor. The judgment is based on claims for injunctive relief, breach of a franchise agreement, trademark infringement damages, and attorney's fees and costs.

In her schedules, the debtor scheduled her 100% ownership interest in Travel Med and legal malpractice claims against Pearson, which represented and advised the debtor and Travel Med with respect to their dealings with Passport. The litigation against Pearson includes claims for professional negligence, breach of fiduciary duty and breach of contract.

In their claims against Pearson, the debtor and Travel Med have asserted that Pearson committed malpractice in giving them advise about their franchise agreement with Passport, the making of royalty payments to Passport, failure to advise them about a $120,000 settlement proffered by Passport, among others.

The trustee and Travel Med have jointly retained counsel to prosecute the claims against Pearson and they have entered into a litigation agreement, giving the trustee exclusive authority to prosecute the claims against Pearson and agreeing to how to split any recovery from those claims. The court approved the litigation agreement between the trustee and Travel Med on April 22, 2014. Dockets 138 & 139. The ruling on the motion to approve that agreement is incorporated here by reference. Docket 139.

The damages sought in the claims against Pearson aggregate to over $800,000. Pearson's malpractice insurance policy limit is $1 million, but the policy is a "diminishing policy," meaning that it also covers the attorney's fees and costs associated with the defense to the malpractice claims.

The trustee is seeking authority to make a Cal. Civ. Proc. Code § 998(d) offer to Pearson in the amount of $633,000.

Cal. Civ. Proc. Code § 998(d) provides that "(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs."

The trustee is convinced that the offer is in the best interest of the estate and the creditors, given that the estate is about to incur substantial expert witness fees and costs in the litigation against Pearson.

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, assuming Pearson accepts it. The court will authorize the trustee to make the offer.

Given that the $1 million insurance policy limit is being diminished by the fees and costs of defending the lawsuit, given that the claims are factually complex and will require substantial expert evidence, given that the estate has not yet incurred the expert fees and costs it anticipates incurring, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

The motion will be granted but only to the extent the final compromise with Pearson does not include any other terms that are not considered "boiler plate" terms in a typical settlement agreement. In the event the final compromise with Pearson includes non-boiler plate terms not mentioned in this motion, the trustee shall be required to obtain separate court approval of that compromise. The court is not approving such compromise in this ruling.

3. 11-21932-A-7 CYRISHJADE DISCIPULO — MOTION TO AVOID JUDICIAL LIEN
TJW-5
VS. MAGDALENA CASUGA — 5-19-14 [40]

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from June 2, in order for the debtor to submit further evidence. The debtor was required to submit a declaration by June 16. Docket 48. No further evidence has been submitted by the debtor. Accordingly, the ruling from June 2 follows below.

The debtor seeks to avoid a judicial lien held by Magdalena Casuga on a real property in Vallejo, California.

The motion will be denied. The only evidence of the lien is a title report indicating that Magdalena Casuga holds a judicial lien for $19,472 against the property. The lien is based on a judgment entered on September 14, 2009. The abstract of judgment was recorded with Solano County on November 9, 2009.

However, the title report does not identify the debtor in this case as the judgment debtor in the judgment. The debtor in this case is Cyrishjade Discipulo, whereas the debtor in the judgment giving rise to the lien is someone named Karen Galzote. The motion says nothing about Karen Galzote and makes no effort to explain the discrepancy.

The foregoing is important because Schedule A states that the debtor is only on

the title of the property and not on the loan secured by the property. This implies that the property was either transferred to the debtor or that there are other persons on title with the debtor.

In any event, the court will not permit the debtor to avoid a judicial lien arising from a judgment entered against anyone other than the debtor. The motion will be denied.

4. 13-23434-A-7 JERMAINE FORD — MOTION TO AVOID LIEN AND FOR SANCTIONS
KY-1
VS. MID-STATE BUILDERS, INC. — 5-22-14 [65]

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

The debtor seeks damages against Mid-State Builders, Inc., for an alleged violation of the automatic stay.

In 2012, the debtor's home suffered "fire and casualty" damage. Mid-State was hired to repair and restore the property. The contract value of the construction work Mid-State was to perform was $38,188.28, all to be paid by the debtor's residential insurer. Mid-State was paid $25,500 of that amount, with the remainder to be paid upon completion of the work. Mid-State completed its work on the home in February 2013, but the debtor did not pay the balance owed.

The debtor filed the instant bankruptcy case on March 14, 2013. On April 1, 2013, Mid-State recorded a mechanics lien against the property. On July 25, 2013, Mid-State filed with the bankruptcy court a notice of continued perfection of the lien. Docket 45.

The debtor complains that Mid-State violated the automatic stay under 11 U.S.C. § 362(a)(4), which provides that "a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

. . .

(4) any act to create, perfect, or enforce any lien against property of the estate."

The debtor complains that the violation consisted of the April 1, 2013 recordation of the mechanics lien and the filing of the July 25, 2013 notice of continued perfection.

Mid-State opposes the motion, contending that 11 U.S.C. § 362(b)(3) applies and the automatic stay was not in force.

Exceptions to the automatic stay are to be construed narrowly. Village Nurseries v. Gould (In re Baldwin Builders), 222 B.R. 406, 412 (B.A.P. 9th Cir. 1999). The fundamental objectives of the stay include "maintaining a status quo, protecting the estate against a multiplicity of lawsuits in various forums, and preserving the relative priorities of creditors, pending a distribution of estate assets." Id.

11 U.S.C. § 362(b)(3) provides that "[t]he filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay—

. . .

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title."

11 U.S.C. § 546(b) provides that:

"(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If—

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, *by giving notice within the time fixed by such law* for such seizure or such commencement." (Emphasis added).

11 U.S.C. § 547(e)(2)(A) specifies that:

"For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made— (A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B)."

In other words, the key to whether 11 U.S.C. § 362(b)(3) applies is whether "the trustee's rights and powers are subject to such perfection under section 546(b) of this title or . . . such act is accomplished within the period provided under section 547(e)(2)(A) of this title."

California law requires the perfection of a mechanics lien by notice under Cal. Civ. Code § 8412, which provides: "A direct contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the direct contract, and before the earlier of the following times: (a) Ninety days after completion of the work of improvement. (b) Sixty days after the owner records a notice of completion or cessation."

California law also requires the commencement of a lawsuit for the enforcement of the lien, under Cal. Civ. Code § 8460(a), which provides that "(a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable."

The priority of mechanics liens in California is governed by Cal. Civ. Code § 8450(a), which provides that "(a) A lien under this chapter, other than a lien provided for in Section 8402, has priority over a lien, mortgage, deed of trust, or other encumbrance . . . that (1) attaches after commencement of the work of improvement or (2) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice."

"We see nothing ambiguous in the words 'maintenance or continuance of perfection,' nor anything incoherent or inconsistent in enforcing the notice requirement. Under California law, the filing of a foreclosure suit, an enforcement action, is required to maintain the perfection of a lien: if no suit is timely filed, the lien becomes void. Section 546(b) unambiguously mandates that, *if commencement of an action is required to maintain or continue perfection, notice shall be given instead*." (Emphasis added).

Village Nurseries v. Gould (In re Baldwin Builders), 222 B.R. 406, 411 (B.A.P. 9th Cir. 1999).

The court agrees with Mid-State that the April 1, 2013 recordation of the mechanics lien was excepted from the automatic stay under 11 U.S.C. § 362(b)(3). "The Court further notes that recording a mechanics' lien is not considered an act to enforce the contractor's claim, merely an act to perfect it. For this reason, and because the contractor's right to perfect its lien is a vested pre-petition right, the recordation of the lien is excepted from the bar of the automatic stay. 11 U.S.C. § 362(b)(3)." Cocolat, Inc. v. Fisher Dev., Inc. (In re Cocolat, Inc.), 176 B.R. 540, 550 (Bankr. N.D. Cal. 1995).

On the other hand, while under California law the filing of a foreclosure suit is required to maintain perfection of a mechanics lien, the July 25, 2013 notice of continued perfection - filed instead of the commencement of action as required by 11 U.S.C. § 546(b) - was done outside the 90-day window "after recordation of the claim of lien," as prescribed by Cal. Civ. Code § 8460(a) and mandated by 11 U.S.C. § 546(b)(2)(B) (mandating that the giving of the notice must be "within the time fixed by such law"). It was done 115 days after the April 1, 2013 recordation of the claim of lien. See also Baldwin Builders at 411-13.

Accordingly, the trustee's rights and powers are not subject to the July 25, 2013 notice. And, such notice was not accomplished within the 30-day period after recordation of the lien (*i.e.*, "at the time such transfer takes effect), as allowed by under 11 U.S.C. § 547(e)(2)(A). Thus, the July 25, 2013 notice is not excepted from the stay under 11 U.S.C. § 362(b)(3) and the filing of that notice violated the stay.

The filing of the July 25, 2013 notice is void. As a result, the April 1, 2013 recordation of the claim of lien has been rendered invalid and Mid-State does not have a mechanics lien against the property.

Next, the question is whether the filing of the July 25, 2013 notice constituted 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 § 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)).

Mid-State obviously was aware of the instant bankruptcy case and the automatic stay when it filed the notice of continued perfection on July 25, 2013, given that Mid-State filed the notice in this bankruptcy case. See Docket 45. Recording the notice, then, was a willful violation of the stay.

The willful aspect of the violation is apparent also from the fact that Mid-State failed to withdraw the July 25, 2013 notice of continued perfection, even after the debtor's prior counsel specifically advised Mid-State that the notice violated the stay. Docket 69, Ex. 3.

Turning to damages, the court will deny the damages requested by the debtor under Sternberg v. Johnston, 595 F.3d 937 (9th Cir. 2010).

Sternberg v. Johnston, 595 F.3d 937 (9th Cir. 2010), does not prevent the court from awarding reasonable fees and costs to the debtors. Yet, in Sternberg, the Ninth Circuit limited the award of attorney's fees pursuant to 11 U.S.C. § 363(k) to fees incurred for legal work necessary to remedy a violation of the stay. Section 362(k), however, does not permit a debtor to recover fees incurred in the prosecution of a claim for the damages sustained as result of the violation of the automatic stay. Sternberg, at 947-48. The court in Sternberg limited the phrase "actual damages" in section 362(k)(1) to *fees incurred as a result of the automatic stay violation itself*. "Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)." "Under the American Rule, a plaintiff cannot ordinarily recover attorney fees spent to correct a legal injury as part of his damages." Sternberg, at 947. In reaching its conclusion, the court in Sternberg reasoned that "[p]ermitting a debtor to collect attorney fees incurred in prosecuting a damages action would further neither the financial nor the non-financial goals of the automatic stay."

The debtor is seeking to recover $2,461 in damages. "[The debtor] has incurred fees of $1,771.00 in connection with this Motion. [The debtor] anticipates additional fees of $460.00 should he be required to file a reply to any opposition as well as $230.00 to appear at any hearing on this Motion." Docket 67 at 5.

Based on the foregoing, the damages sought are based solely on the debtor's preparation and prosecution of this motion, *i.e.*, a claim for the damages sustained as result of the violation of the automatic stay. And, the court has no evidence of damages sustained by the debtor as result of the stay violation itself. The court then is unpersuaded that the debtor is entitled to any actual damages as permitted by 11 U.S.C. § 362(k)(1).

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

As there are no actual damages for the court to award here and as the violation is based solely on the filing with this court of a late notice of continued perfection of a post-petition lien that did not violate the stay, the court is not convinced that punitive damages are warranted. The nature of the violation is not sufficiently egregious to warrant such damages. The notice would not have even violated the stay, had it been filed timely pursuant to Cal. Civ. Code § 8460(a) and 11 U.S.C. § 546(b)(2)(B). The motion will be granted in part and denied in part.

5. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION FOR RELIEF FROM AUTOMATIC STAY
FAR-4 — 6-16-14 [24]
FARMERS INSURANCE EXCHANGE VS.

Tentative Ruling: The motion will be granted in part.

The movants, Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, and Farmers New World Life Insurance Company, seek relief from stay under 11 U.S.C. § 362(d)(1) permitting the continuation of pending litigation in the U.S. District Court for the Eastern District of California, against Debtor Larry McCarren and other non-debtor defendants, involving the following claims:

- breach of contract,
- misappropriation of trade secrets,
- violation of the Computer Fraud Act under 18 U.S.C. § 1030(a)(2)(C) and § 1030(a)(4), and
- civil conspiracy.

There are twelve (12) non-exclusive factors a bankruptcy court may weigh in determining whether to lift the automatic stay to permit pending litigation to continue in another forum: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the cause of action involves the debtor as a fiduciary; (4) whether a specialized tribunal has been

established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) whether the debtor has insurance for its defense and possible liability; (6) whether the action essentially involves third parties; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) whether the judgment claim would be subject to equitable subordination; (9) whether a movant's success would result in a judicial lien avoidable by the debtor; (10) judicial economy; (11) whether the action has progressed to the point where the parties are prepared for trial; and (12) the impact of the stay on the parties and the "balance of hurt." In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984); see also Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990) (cause may exist for lifting the stay, "[w]here a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues.").

The factors considered by Tucson Estates are factors typically considered by courts in deciding whether to abstain. They include:

"(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties."

Tucson Estates at 1166-67.

On June 13, 2014, the movant timely filed three nondischargeability claims against Debtor Larry McCarren pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6) and arising from the transactions and events alleged in the district court litigation. Adv. Proc. No. 14-2164.

Given the timely filed nondischargeability action, given the relatedness of the nondischargeability action and the pending lawsuit, given that the lawsuit against the debtor has been pending since April 2013, and given that the lawsuit involves at least five other non-debtor defendants, continued litigation of the lawsuit in the district court is warranted. This court cannot adjudicate any of the claims against the non-debtor defendants due to lack of subject matter jurisdiction. And, it is imperative that the claims be adjudicated in a single forum, especially given the joint tort nature of the trade secret misappropriation and civil conspiracy claims.

The court will modify the automatic stay to permit the lawsuit to continue with respect to the above-enumerated claims, except for the breach of contract claim. The movant has not established that litigation of the breach of contract claim may lead to a nondischargeable debt.

More, intentional breaches of contract are not actionable under § 523(a)(2)(A),

the fraud aspect of § 523(a)(4), or § 523(a)(6). Lockerby v. Sierra, 535 F.3d 1038, 1042-43 (9th Cir. 2008) (holding that intentional breach of contract does not support a § 523(a)(6) claim just because it was substantially certain that the breach would cause injury); Whited v. Galindo (In re Galindo), 467 B.R. 201, 213 (Bankr. S.D. Cal. 2012) (holding that "[a]n intentional breach of a contract alone will not trigger the 'willful and malicious injury' dischargeability exception"); Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1205 (9th Cir. 2001) and Donaldson v. Ortenzo Hayes (In re Ortenzo Hayes), 315 B.R. 579, 590 (Bankr. C.D. Cal. 2004) (holding that intentional breaches of contract require tortious conduct in order for the debt arising from the breach to be excepted from discharge); see also Rice, Heitman & Davis, S.C. v. Sasse (In re Sasse), 438 B.R. 631, 648 (Bankr. W.D. Wis. 2010) (holding that "intentional breach of contract is not fraud under § 523(a)(2), and a promise about future acts, without more, likewise does not constitute a misrepresentation").

The court will modify the automatic stay to permit the litigation to continue with respect to the other claims in order to obtain a judgment. The court will not lift the stay to allow the collection or enforcement of any judgment against the debtor. If and when the movant obtains a judgment against the debtor, it may utilize the judgment only in the nondischargeability action. The motion will be granted in part.

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

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

6. 14-23254-A-7 LEE ANNE RECUPERO — MOTION TO APPROVE LOAN MODIFICATION
BLG-1 — 6-4-14 [12]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to approve a loan modification of a mortgage on a real property in Redding, California. However, the court does not approve loan modification agreements in a chapter 7 case because such agreements except the debtor's personal liability from discharge. If the debtor wishes to modify the loan and except the personal liability on the loan from discharge, the debtor should file a reaffirmation agreement under 11 U.S.C. § 524. The court will not approve such agreements outside the protections prescribed by 11 U.S.C. § 524(c). The motion will be denied.

7. 13-34367-A-7 JOHN STERGION AND ANGELA D'ANGELO — MOTION TO SELL
DMW-2 — 5-21-14 [24]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and where is for $15,000 the estate's interest in a real property (vacant land) in Fernley, Nevada to Darren Simper. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and for authority to pay a commission to the real estate brokers involved in the transaction. The trustee is not aware of any encumbrances against the property. The debtors have claimed an exemption of $4,551 against the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will allow the payment of a 10% commission to the estate's real estate broker, Daniel McCreary, to be shared with the buyer's broker.

8. 14-24671-A-7 CHRISTINA CAMPION — MOTION FOR RELIEF FROM AUTOMATIC STAY
SNM-1 — 6-9-14 [10]
CHRISTOPHER MCCALL 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, Christopher McCall, seeks relief from the automatic stay as to real property in Vacaville, California. The movant is the legal owner of the property and the debtor leased it from him. The debtor defaulted under the lease agreement on April 1, 2014. The debtor filed the instant case on May 2, 2014. The movant seeks relief from stay to exercise his rights under state law to obtain possession of the property.

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 the months of April and 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.

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

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

9. 14-23089-A-7 MARTINE CHAMPION — TRUSTEE'S MOTION TO DISMISS
MDM-1 — 5-14-14 [12]

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

The trustee moves for dismissal because the debtor did not attend a meeting of creditors held on May 13, 2014. The debtor also did not appear at the prior and initial meeting of creditors held on April 29, 2014.

The debtor's failure to appear at any of her meetings of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

10. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO SELL
HSM-9 — 5-30-14 [152]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell - as is, where is and with all faults - for $443,000 the estate's interest in a real property in Folsom, California (131 Gold Creek Circle) to Phillip and Phyllis Barkowsky. The trustee is also asking the court to approve the payment of a 6% real estate commission to the estate's and the buyer's broker.

The property is subject to two mortgages totaling approximately $362,000, consisting of a first mortgage for $282,896 in favor of Seterus, Inc. and a second mortgage for $79,000 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: the customary closing costs; a 6% commission to the real estate broker, Reed Block Realty, to be shared with the buyer's broker; and $5,000 to the tenant at the property, Anna Muniz, under a settlement and cooperation agreement approved by this court, minus June and July rent Ms. Muniz is required to pay to the trustee (Docket 140). The offset of the June and partial July 2014 rent against the $5,000 to be paid to Ms. Muniz under the settlement and cooperation agreement, will be documented by an addendum to the agreement, to be filed by the trustee with the court once it is executed.

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 6% real estate commission, which is to be shared with the buyer's broker.

As the court is not approving the sale free and clear of liens under 11 U.S.C. § 363(f), Seterus' conditional non-opposition - stating that it has no opposition to the sale as long as its claim will be paid in full - makes no sense. In other words, for the sale to be consummated, the secured claims will have to be paid in full from escrow.

FINAL RULINGS BEGIN HERE

11. 14-23708-A-7 APRIL MENDES — MOTION TO AVOID JUDICIAL LIEN
DBJ-1
VS. MOHAWK SERVICING, L.L.C. — 5-30-14 [11]

Final Ruling: The motion will be dismissed without prejudice because the respondent creditor was not served with the motion. See Fed. R. Bankr. P. 7004(b)(3). Docket 15. While the debtor served the creditor's attorney, unless the attorney agreed to accept service, and there is no evidence of an agreement, such service is insufficient. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

12. 14-23708-A-7 APRIL MENDES — MOTION TO AVOID JUDICIAL LIEN
DBJ-2
VS. NORTHERN CALIFORNIA COLL. SVC., INC. — 5-30-14 [16]

Final Ruling: The motion will be dismissed without prejudice because the respondent creditor was not served with the motion. See Fed. R. Bankr. P. 7004(b)(3). Docket 20. While the debtor served the creditor's attorney, unless the attorney agreed to accept service, and there is no evidence of an agreement, such service is insufficient. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The court also notes that even the creditor's attorney was not served at the correct address. His address is 700 Leisure Lane and not 7000 Leisure Lane. See Docket 20.

13. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-10 — 5-21-14 [634]

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 requests approval of a settlement agreement between the estate and Huddleston & Sipos Law Group, LLP, resolving a preference action involving transfer(s) totaling $19,729.22. Under the terms of the compromise, H&S will pay $3,000 to the estate in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and

delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that H&S has a substantial ordinary course of business defense to the claim, given that the trustee has not filed an adversary proceeding yet, given the small amount at stake, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

14. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-11 — 5-21-14 [639]

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 requests approval of a settlement agreement between the estate and Johns Manville, resolving a preference action involving transfer(s) totaling $31,653.41. Under the terms of the compromise, JM will pay $5,000 to the estate in full satisfaction of the claim.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given JM's $14,416.50 new value defense, given that the trustee has not filed an adversary proceeding yet, given the relatively small amount at stake remaining, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

15. 12-28413-A-7 F. RODGERS CORPORATION
CWC-12

MOTION TO APPROVE COMPROMISE
5-21-14 [644]

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 requests approval of a settlement agreement between the estate and Central Valley Limited Liability Company, resolving a preference action involving transfer(s) totaling $28,347.80. Under the terms of the compromise, CVL.L.C. will pay $3,000 to the estate in full satisfaction of the claim.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given CVL.L.C.'s contemporaneous exchange and ordinary course of business defenses to the claim, given that the trustee has not filed an adversary proceeding yet, given the relatively small amount at stake, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

16. 12-28413-A-7 F. RODGERS CORPORATION MOTION TO APPROVE COMPROMISE
CWC-13 5-21-14 [649]

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 requests approval of a settlement agreement between the estate and Service Partners Supply, L.L.C., resolving a preference action involving transfer(s) totaling $8,790.58. Under the terms of the compromise, Service Partners will pay $4,395 to the estate in full satisfaction of the claim.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the trustee has not filed an adversary proceeding yet, given the small amount at stake, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

17. 13-31715-A-7 THE BROILER, INC. MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
ASF-2 6-2-14 [63]

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 $2,500 in fees and expenses, reduced from $3,339.50 in fees and $151.63 in expenses. This motion covers the period from September 9, 2013 through May 12, 2014. The court approved the movant's employment as the estate's accountant on September 11, 2013. In performing its services, the movant charged hourly rates of $325 and $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 review of the debtor's prior returns and the analysis of pre-petition sales and payroll tax obligations on the estate's ability to transfer a liquor license.

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

18. 13-31715-A-7 THE BROILER, INC.
HCS-2

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-2-14 [69]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,500 in fees and expenses, reduced from $21,302 in fees and $871.99 in expenses. This motion covers the period from September 9, 2013 through the present. The court approved the movant's employment as the trustee's attorney on September 24, 2013. In performing its services, the movant charged hourly rates of $225, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the trustee with the general

administration of the estate, (2) assisting the estate with the sale of personal property, (3) reviewing schedules and other petition documents about the liquidation of assets, (4) obtaining court approval of a sale of restaurant equipment and furniture, free and clear of liens, (5) analyzing the potential sale of a liquor license, and (6) preparing and filing employment and compensation motions.

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

19. 11-40419-A-7 GLENN/SHIRLEY RUST — MOTION TO COMPEL ABANDONMENT
ULC-2 — 5-23-14 [27]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in a lawsuit against Bank of America, Reconstruct Company, The Bank of New York Mellon, Green Tree Servicing and Does 1-50. The lawsuit includes claims for intentional misrepresentation, negligent misrepresentation, promissory estoppel, breach of contract, negligence, violation of Cal. Civ. Code § 2923.6, violation of Cal. Civ. Code § 2924, violation of Cal. Bus. & Prof. Code § 17200, seeking declaratory relief, among other things.

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

The trustee has decided that the lawsuit is of no value to the estate. The trustee filed a report of no distribution on June 11, 2014. Accordingly, the lawsuit is of inconsequential value to the estate. The motion will be granted.

20. 07-29026-A-7 MARK/PATRICIA BUCEDI — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 4-21-14 [70]
HSBC BANK USA, N.A. VS.

Final Ruling: This motion has been resolved by stipulation. See Dockets 95 & 97.

21. 13-33728-A-7 MARIA KESSLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 5-21-14 [19]
CITIMORTGAGE, INC. 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, Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Shingle Springs, California. The property has a value of $226,500 and it is encumbered by claims totaling approximately $477,072. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

22. 10-52330-A-7 JAMES/ELAINE RABB — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SLF-3 — 5-27-14 [63]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,000 in fees and expenses, reduced from approximately $23,000 in fees and $1,051.38 in expenses. This motion covers the period from approximately April 2011 through the present. The court approved the movant's employment as the trustee's attorney on April 20, 2011. In performing its services, the movant charged hourly rates of $225, $250, $275 and $295.

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, analyzing, and prosecuting fraudulent conveyance claims against members of the debtors' family, (2) propounding discovery in the litigation, (3) negotiating settlement of the litigation, (4) obtaining approval of the settlement, and (5) 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.

23. 12-38930-A-7 TERRY/JAMIE YORK — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 4-1-14 [52]
BANK OF AMERICA, N.A. VS.

Final Ruling: The hearing on this motion has been continued to August 8, 2014 at 10:00 a.m. Docket 66.

24. 14-25434-A-7 GREGORY MONACO — MOTION FOR RELIEF FROM AUTOMATIC STAY
JO-9501 — 6-6-14 [19]
DANILO/GLORIA BALDERAS VS.

Final Ruling: The motion will be dismissed without prejudice.

The motion is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(2).

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

25. 14-23943-A-7 LONNIE/LISA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 5-19-14 [10]
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 2004 Dodge RAM 2500. The vehicle has a value of $20,000 in Schedule B ($12,750 according to the movant) and its secured claim is approximately $30,362.

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 27, 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.

26. 14-24845-A-7 MARGARET HARLOW — MOTION TO COMPEL ABANDONMENT
GK-1 — 5-22-14 [9]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Williams, California.

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

The debtors have scheduled the value of the property at $147,495. The property is encumbered by a single deed of trust in favor of Wells Fargo Bank in the amount of $124,186. The debtor exempted $17,610 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(5).

Given the scheduled value of the property, the mortgage on the property, the debtor's exemption claim, and the approximately $11,800 in projected sales costs (8% of $147,495), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

27. 14-25247-A-7 GEM-1 — MANUEL VELASQUEZ — MOTION TO DISMISS DUPLICATE CASE 5-29-14 [20]

Final Ruling: The motion will be dismissed without prejudice.

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

28. 14-21665-A-7 WRF-3 — GERMAN OCHOA AND CLAUDIA DIAZ — MOTION TO REDEEM 4-23-14 [26]

Amended Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The debtor seeks to redeem a 2006 Chevrolet Uplander vehicle with approximately 166,753 miles in a fair condition. The private party Kelley Blue Book value of the vehicle is $2,040. The debtor listed GM Financial as holding a secured claim in the approximate amount of $4,912 in Schedule D.

GM Financial has filed a non-opposition to the motion. Docket 31.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended primarily for personal, family or household use, from a lien securing a dischargeable consumer debt if the property was exempted under § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The property must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would

charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor has filed a stipulation with GM Financial, providing that the replacement value of the vehicle is $2,040. Docket 36. The debtor has claimed an exemption in the vehicle in the amount of $2,040, in Amended Schedule C. Docket 33. Given this, the court concludes that the replacement value of the creditor's security is $2,040. The sum of $2,040 shall be tendered to the creditor by the debtor within 30 days of entry of the order on this motion.

29. 14-20479-A-7 JAMES BAFFORD
EJN-1

MOTION TO EXTEND DEADLINE
4-24-14 [14]

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

The motion will be granted.

The trustee requests a 128-day extension, from April 25, 2014 to August 31, 2014, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was April 25, 2014. The motion was filed on April 24, 2014. Thus, the motion complies with the temporal requirements of the rule.

The trustee requests the extension because the debtor has not turned over his 2013 IRS tax refund to the trustee, has not accounted for how the refund was spent, and the trustee needs additional time to investigate the debtor's financial affairs, including whether the debtor received a refund from the state tax authorities.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to August 31, 2014.

30. 14-23482-A-7 JOHN GOULART
RDS-4
VS. DISCOVER BANK

MOTION TO AVOID JUDICIAL LIEN
5-27-14 [50]

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 Discover Bank for the sum of $16,277.37 on December 21, 2007. The abstract of judgment was recorded with Placer County on February 22, 2008. That lien attached to the debtor's one-half interest in a real property in Newcastle, 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 $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in Amended Schedule C, filed on May 23, 2014. Docket 48.

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).

31. 14-23482-A-7 JOHN GOULART — MOTION TO AVOID JUDICIAL LIEN
RDS-5
VS. ROYAL BANK OF SCOTLAND, N.B. — 5-27-14 [55]

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 Royal Bank of Scotland for the sum of $15,572.16 on June 1, 2009. The abstract of judgment was recorded with Placer County on September 8, 2009. That lien attached to the debtor's one-half interest in a real property in Newcastle, 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 $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in

Amended Schedule C, filed on May 23, 2014. Docket 48.

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).

32. 14-23482-A-7 JOHN GOULART — MOTION TO AVOID JUDICIAL LIEN
RDS-6
VS. FIA CARD SERVICES, N.A. — 5-27-14 [60]

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 FIA Card Services, N.A. for the sum of $14,873.50 on June 5, 2009. The abstract of judgment was recorded with Placer County on January 6, 2010. That lien attached to the debtor's one-half interest in a real property in Newcastle, 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 $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in Amended Schedule C, filed on May 23, 2014. Docket 48.

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

33. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
HONDA LEASE TRUST VS. — 5-28-14 [102]

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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2013 Honda Accord.

Given the entry of the debtor's discharge on January 8, 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 trustee has filed a non-opposition to the motion. This is cause for the granting of relief from stay.

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

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

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

34. 14-23293-A-7 DELMER KING — MOTION TO REDEEM
NBC-1 — 5-20-14 [12]

Final Ruling: The hearing on this motion has been continued to July 11, 2014 at 10:00 a.m.