UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 11, 2014 at 10:00 a.m.

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

7, 9, 10, 12, 15, 17, 22

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 AUGUST 8, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 25, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 1, 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. 11-38003-A-7 RICHARD/KRISTINA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
WSH-1 — 6-27-14 [144]
ERIC TYE VS.

Tentative Ruling: The motion will be denied as unnecessary.

The movant, Eric Tye (dba Tyco Roofing, Co.), seeks relief from the automatic stay to proceed with his cross-claims against debtor Richard Smith (dba RJ Smith & Associates) in a state court construction defects action, where the plaintiff-homeowners are prosecuting claims for negligence against the movant. The movant was the subcontractor for the debtor, who served as a general contractor on the project. Recovery by the movant will be limited to available insurance coverage, if any.

The motion will be denied as unnecessary because this case closed on November 9, 2012 and the automatic stay dissolved at that time. See 11 U.S.C. § 362(c)(2)(A).

Although the movant asked the case to be reopened and the case was reopened on April 23, 2014, nothing resurrects the automatic stay when a bankruptcy case is reopened. Hence, this motion will be denied as unnecessary.

2. 14-25103-A-7 ROBERT RAMIREZ — MOTION TO AVOID JUDICIAL LIEN
HLG-1 — 6-10-14 [13]
VS. CACH, L.L.C.

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of Cach, L.L.C. for the sum of $5,488.54 on September 7, 2012. The abstract of judgment was recorded with Sacramento County on July 2, 2013. That lien attached to the debtor's residential real property in Sacramento, California. The debtor is asking the court to avoid the subject lien under 11 U.S.C. § 522(f)(1).

The motion will be denied because while the attached amended Schedule C lists an exemption for the subject property, neither the original nor the amended Schedule C actually filed with the court contain an exemption in the property. See Dockets 1 & 10. As the debtor has not filed the Amended Schedule attached to this motion, the court cannot grant the motion on the basis that the subject lien impairs an exemption. Until Schedule C with a claimed exemption in the property is filed with the court, the debtor has not claimed an exemption in the property. And, without claiming an exemption in the property, the debtor cannot avail himself of the benefit of 11 U.S.C. § 522(f)(1). The motion will be denied.

3. 13-35308-A-7 DOROTHY PARENT — MOTION TO SELL AND TO APPROVE COMPENSATION FOR REALTOR
HCS-3 — 6-13-14 [58]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $175,000 the estate's interest in real property in Sacramento, California (Mirassou Court) to Housing Group Fund Corporation. The sale is as is and is subject to an existing lease

agreement and the rights of the tenants currently residing at the property. The scheduled value of the property is $175,000. The trustee also asks for approval of the payment of the real estate commission.

The property has not been claimed as exempt and is subject to a mortgage held by Wells Fargo Bank, in the approximate amount of $108,000. That claim will be paid in full from escrow. The motion identifies no other encumbrances 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 approval of this sale is not free and clear of liens or interests. The court will authorize payment of the real estate commission, in accordance with the terms of employment of Ronald Nakano from Coldwell Banker.

4. 14-25610-A-7 NHIA VANG AND SOUA YANG — MOTION TO SET ASIDE 6-23-14 [20]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to set aside its June 16, 2014 order dismissing this 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).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

This motion was filed on June 23, 2014, only seven days after entry of the subject order. Hence, the motion is timely.

Preliminarily, the motion contains several serious deficiencies. First, the motion does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion be accompanied by a separate notice of hearing telling respondents whether and when written opposition is required under this court's Local Bankruptcy Rules. The motion is not accompanied by any notice of hearing.

Second, the motion is not signed. There is no electronic or otherwise signature in the motion, violating Local Bankruptcy Rule 9004-1(c), which provides that "[a]ll pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them."

Third, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion does not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

Nevertheless, the court will resolve the motion on its merits.

When the debtors filed this case on May 28, 2014, they did not file Schedules A and B. As a result, on May 29, the court issued a notice of incomplete filing, telling the debtors and their counsel that unless Schedules A and B were filed with the court no later than June 11, 2014, the court could dismiss the case. Docket 3. The notice of incomplete filing was served on the debtors at the Phoenix Park Drive address they provided to the court and was served on their counsel at the Stockton Blvd. address she provided to the court. Docket 16.

Yet, the declaration from the debtors' counsel says only that "[t]he notice from the Court regarding failure to file Schedule A and B did not reach me." Docket 21.

The debtors' counsel does not say that she did not receive the notice of incomplete filing, does not explain what she means by the notice not having reached her, does not explain why the notice did not reach her when the court record is clear that the notice was mailed to the address she provided to the court, and does not explain why the debtors did not respond to the notice - by at least prompting their counsel to file the missing schedules - given that the notice was sent to the debtors as well. Docket 21.

Anyone appearing in this court is aware, or should be aware, that the failure to file documents, including bankruptcy schedules and/or statements, is a violation of 11 U.S.C. § 521(a), triggering the 14-day grace period during which the missing documents may be filed. In this case, the court waited even longer, 19 days - until June 16 - before dismissing the case.

The debtors have not met their burden of persuasion and have not demonstrated any basis under Rule 60(b) for the setting aside of the dismissal order. The evidence in the court's record points to the debtors and their counsel receiving the notice of incomplete filing, yet failing to respond to the notice. As best the court can tell, this was neglect on the part of the debtors' counsel. And, there is inadequate evidence that the neglect rose to the level of excusable neglect under Rule 60(b)(1).

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the debtor; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The motion does not even attempt to brief excusable neglect and specifically

fails to address points three and four of Pioneer. Accordingly, the motion will be denied.

5. 13-33618-A-7 CAROLE BAIRD — MOTION FOR TURNOVER DAMAGE AWARD
DNL-9 — 6-13-14 [123]

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

The trustee seeks a money judgment for $29,359, plus $33 a day after the July 11, 2014 hearing on this motion, against the debtor, based on:

(1) the debtor's failure to comply with this court's April 14, 2014 order granting a motion for turnover of real property in Baja California Sur, Mexico (a duplex consisting of two studios) and having a rental value of $2,838 from April 16, 2014 through July 11, 2014 and $33 a day thereafter,

(2) the debtor's conversion of a trailer located on the property in Mexico, having a value of $4,000, and

(3) the debtor's conversion of $22,521 withdrawn from a deposit account after the conversion of this case from chapter 13 on November 4, 2013.

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 October 22, 2013 as a chapter 13 proceeding. The case was converted to chapter 7 on November 5, 2013. On April 14, 2014, the court entered an order directing the debtor to turn over to the trustee the subject real property and account for post-petition rents collected from the property, within 14 days of entry of that order. Docket 114. The debtor has not complied with the court's April 14 order.

The court has received sufficient evidence from the trustee about the debtor's non-compliance with the April 14 order and the value of the trailer on the property. Docket 126, Hamman Decl. Even though the trailer is not listed in the debtor's schedules, the trustee has produced evidence from which the court infers that the debtor owns the trailer. The evidence consists of statements made by the debtor in the trailer's "for sale" sign, namely, that she is seeking to sell the trailer for $4,500 and that the trailer has been used by her family over the years. Given the debtor's statements in the "for sale" sign posted out of the property in Mexico, the court is satisfied that the debtor owns the trailer and is satisfied with the proffered value of the trailer, $4,000. Docket 126 at 2.

After the November 4, 2013 conversion of the case from chapter 13, the debtor made three withdrawals from the bank account of her wholly owned corporation, Creekside Pet Resort, Inc., totaling $22,521. Docket 125 ¶ 6. This left only $549 in the bank account. As the corporation is owned 100% by the debtor (Schedule B, item 13), the funds taken by the debtor were property of this bankruptcy estate. Docket 17. The debtor has refused to explain to the trustee what entitled her to take the funds from the corporation's account.

The debtor has refused to comply with the court's April 14, 2014 order and has refused to respond to the trustee's requests for documents and turnover of the foregoing estate property. Given this, the court will enter a money judgment against the debtor for $26,521, representing the withdrawals from the corporate bank account and the value of the trailer.

The court will deny the trustee's request for $2,838 representing the fair market rental value of the property, based on the debtor's use of that property. The trustee is not entitled to collect post-petition rent from a debtor every time a chapter 7 case and the debtor is occupying the property, pending the sale of that property by the trustee. The court will not order the

debtor to pay rent for occupying the property in Mexico. If the trustee wishes to take possession of the property and rent the property, subject to further authority from this court, he may be able to do so. But, the court will not order the debtor to pay rent to the trustee for her occupation of the property, while the trustee is attempting to determine what to do with the property.

The court also notes that it has no evidence that the debtor is collecting rent from the property. The motion will be granted in part and denied in part.

6. 13-33618-A-7 CAROLE BAIRD — MOTION TO WITHDRAW AS ATTORNEY
LBG-2 — 6-20-14 [129]

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

Attorney Lucas Garcia asks for permission to withdraw as counsel for the debtor because of unsuccessful attempts to contact the debtor, the movant and the debtor "are no longer able to agree as to important issues on the prosecution of the case," and "the professional relationship between the [movant] and the [d]ebtor has deteriorated irreparably."

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) <u>by other conduct renders it unreasonably difficult for the member to carry out the employment effectively</u>, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The breakdown in the professional relationship and communication between the movant and the debtor is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The debtor's disagreements with the movant has made it difficult for the movant to represent the debtor in this case. Accordingly, the court will permit the movant's withdrawal from this case. The motion will be granted.

7. 09-43132-A-7 TSAR — MOTION TO APPROVE COMPROMISE
CDH-7 — 6-20-14 [171]

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

The motion will be granted.

The trustee seeks approval of a settlement agreement between this estate on one hand and Lisa Taylor and the bankruptcy estate of Lisa Taylor, on the other hand, resolving a lawsuit Ms. Taylor filed against the debtor and resolving a $2,385,520 proof of claim filed in this case.

Under the terms of the compromise, the debtor's insurer will pay $125,000 to the bankruptcy estate of Lisa Taylor, in full satisfaction of any claims by Ms. Taylor or her estate against this estate. The trustee of Ms. Taylor's estate will then dismiss with prejudice the pending lawsuit against the debtor in state court and will amend the proof of claim in this case from a $2,385,520 unsecured claim to a $125,000 claim secured by the proceeds from the debtor's insurer. The movant trustee has waived a surcharge claim under 11 U.S.C. § 506(c) against the $125,000 secured claim of Ms. Taylor's estate.

Aside from the trustee paying a $12,412.50 partial deductible (the debtor had paid the other $2,587.50 of the deductible), this settlement will not affect any distributions to creditors in this case.

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 payment of the settlement amount will come from the debtor's insurer and will not affect the distributions to creditors in this case, given that the movant trustee has paid only $12,412.50 toward the insurance deductible, given that the settlement resolves a $2,385,520 general unsecured proof of claim in this case, given the long history of this litigation, 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.

8. 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.

9. 14-25034-A-7 JANICE PERIOLAT — MOTION FOR RELIEF FROM AUTOMATIC STAY
TC-38 — 6-12-14 [11]
FIRST TECHNOLOGY FEDERAL CREDIT UNION VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, First Technology Federal Credit Union, seeks relief from the automatic stay with respect to a 2005 Lincoln "Aviator."

Contrary to the assertion of the movant, the debtor has not listed the vehicle in her schedules. The debtor has scheduled a 2005 Lincoln "Navigator" which is

encumbered by a secured claim held by Addison Avenue Federal Credit Union. Schedules B & D. This is a different vehicle which is encumbered by a different creditor.

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). Then, the debtor has 30 days from the first date set for the meeting of creditors to perform the debtor's stated intention. See 11 U.S.C. § 521(a)(2)(B).

The petition here was filed on May 13, 2014 and a meeting of creditors was first convened on June 19, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 12. The debtor filed a statement of intention on the petition date but without listing the subject vehicle in the statement. Assuming that the Navigator is the Aviator referenced in the motion, the debtor indicated an intention to reaffirm the vehicle. The debtor has until July 12 to reaffirm it.

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 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 12, 2014, 30 days after the petition date. If the Navigator is the Aviator, the debtor had until July 12 to reaffirm the debtor encumbering the vehicle. The last hearing date to timely accomplish this reaffirmation was July 11. No reaffirmation agreement has been filed.

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 12, 2014 (or on July 12 if the vehicle was listed on the statement of intention).

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.

10. 14-25741-A-7 GENARO GONZALEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 6-27-14 [9]
WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2010 Honda Civic. The movant has produced evidence that the vehicle has a value of approximately $7,325 (value in Schedule B is $6,790) and its secured claim is approximately $10,725.

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.

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.

11. 14-25943-A-7 WENDY HOWAT — MOTION TO RECONSIDER
SS-1 — 6-13-14 [17]

Tentative Ruling: The motion will be granted.

The debtor asks the court to reconsider its June 5, 2014 order denying her motion for waiver of the filing fee. Docket 7.

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).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

This motion was filed on June 13, 2014, only eight days after entry of the subject order. Hence, the motion is timely.

This case was filed on June 3, 2014 and the court entered an order denying the debtor's motion for waiver of the filing on June 5, 2014. Docket 7. The order states that the reason for the denial was "Failure to disclose bank deposits and other assets in the application." Docket 7.

As the debtor attached Schedules A and B to the waiver motion, the court will reconsider its order denying waiver of the filing fee under Rule 60(b)(1).

Waiver of the filing fee is allowed only when the debtor's income is less than 150% of the poverty guidelines last published by the U.S. Department of Health and Human Services. 28 U.S.C. § 1930(f)(1).

The debtor lives in a household of one person with a monthly gross income of approximately $1,441. See Schedule I. The 2014 poverty guidelines annual income for a household of one person is $11,670. 150% of that amount is $17,505 or $1,458.75 a month. The court concludes then that the debtor was eligible for a waiver of the filing fee. The debtor's income was less than 150% of the poverty guidelines last published by the U.S. Department of Health and Human Services. 28 U.S.C. § 1930(f)(1).

The court will vacate its order denying the waiver and will grant this motion. The motion for waiver of the filing fee will be granted.

12. 12-21645-A-7 LISA TAYLOR — MOTION TO APPROVE COMPROMISE
DNL-5 — 6-20-14 [79]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule

9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee seeks approval of a settlement agreement between this estate and Lisa Taylor, on one hand, and the bankruptcy estate of TSAR, a former employer of the debtor, resolving a state court lawsuit Ms. Taylor filed against TSAR and resolving a $2,385,520 proof of claim filed in the TSAR bankruptcy case.

Ms. Taylor's pre-petition lawsuit against TSAR alleged that TSAR discriminated against her on the basis of race, failed to fully compensate her, wrongfully terminated her, and inflicted emotional distress upon her.

Under the terms of the compromise, TSAR's insurer will pay $125,000 to this estate, in full satisfaction of any claims by Ms. Taylor or this estate against the TSAR estate. The movant trustee will then dismiss with prejudice the pending lawsuit against TSAR and will amend the proof of claim in the TSAR case from a $2,385,520 unsecured claim to a $125,000 claim secured by the proceeds from TSAR's insurer. Also, the TSAR trustee has waived a surcharge claim under 11 U.S.C. § 506(c) against the $125,000 secured 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 TSAR filed for bankruptcy shortly after Ms. Taylor was let go from employment, given the serious questions raised by the TSAR trustee about Ms. Taylor's credibility as a witness, given the substantial evidence of performance issues with Ms. Taylor at TSAR, given that a trial, if any, would have to take place in state court, with much protraction and delay, given the long history of this litigation, and given the inherent costs, risks, 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.

13. 13-34845-A-7 SHARON SMITH — MOTION TO SELL
HCS-5 — 6-6-14 [69]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $190,000 the estate's unencumbered one-sixth interest in two multi-unit real properties in Emeryville, California to Mary Hefley, who is the debtor's mother. The estate's real estate broker valued the estate's interest in the properties at $190,000.

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 significant proceeds for distribution to creditors of the estate, while it is not incurring expenses to list and market the property interests for sale, including expenses for the prosecution of a 11 U.S.C. § 363(h) action. 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.

14. 14-25252-A-7 FERNANDO SANCHEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JBC-1 — 6-24-14 [14]
REZA YAZDI VS.

Tentative Ruling: The motion will be granted in part.

The movant, Reza Yazdi, seeks relief from the automatic stay as to real property in Antelope, California. The movant is the legal owner of the property and the debtor leased it from him pre-petition. The debtor defaulted under the lease agreement on or about May 1, 2014. The debtor filed the instant case on May 19, 2014. The movant filed an unlawful detainer action against the debtor on May 20, without knowing of this bankruptcy filing. The movant seeks relief from stay to exercise his rights under state law to obtain possession of the property. The motion does not ask for nunc pro tunc relief.

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, he has defaulted under the lease agreement by failing to pay the rent due for the month of May and onward. 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.

The court will not permit the movant "to request payment of post-petition rents accruing after August 20, 2013, in the unlawful detainer action." The movant has not established that the attempt to collect rent due post-petition is not a pre-petition claim subject to the debtor's chapter 7 discharge. The collection of such rent would be based on the parties' pre-petition lease agreement. 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.

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

15. 14-21862-A-7 ADRIAN DELGADILLO — MOTION TO AVOID JUDICIAL LIEN
WRF-3 — 4-23-14 [25]
VS. CAPITAL ONE BANK (U.S.A.), N.A.

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from May 19 to June 2 and then once again from June 2 to July 11. The debtor has amended his Schedule C since the June 2 hearing on the motion. An amended ruling from June 2 follows below.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,455.92 on September 15, 2011. The abstract of judgment was recorded with Yolo County on January 10, 2012. That lien attached to the debtor's residential real property in Woodland, 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 $200,000 as of the date of the petition. The unavoidable liens total $269,902 on that same date, consisting of a mortgage for $227,690 in favor of Green Tree Servicing and a mortgage for $42,212 in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $8,096 in Amended Schedule C. Docket 34.

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

16. 11-34464-A-7 STUART SMITS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MHK-2 — 6-11-14 [280]
ELIAS BARDIS VS.

Tentative Ruling: The motion will be denied without prejudice in part and dismissed as moot in part.

The movant, Elias Bardis, seeks relief from stay as to real property in Sacramento, California (Mills Road).

Given the entry of the debtor's discharge on June 13, 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(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant asserts that the property has a value of between $645,000 and $700,000 and it is encumbered by claims totaling approximately $1,164,284. The movant holds a judgment lien against the property, securing a claim of approximately $786,166.

The movant's lien is in fourth priority position, after a mortgage for approximately $340,000 held by JPMorgan Chase Bank and two judgment liens held by JPMorgan Chase Bank for a total of approximately $38,000.

The motion will be denied as to the estate because the only evidence of value for the property is Elias Bardis' own opinion of value, based on his "review of on-line databases, including Zillow. Docket 282 at 2. He states that his opinion of value is based on information and belief. Id.

The evidence of value proffered by the movant is inadmissible. The movant's declaration does not qualify the movant as an expert witness, permitting him to render opinions based on scientific, technical or otherwise specialized knowledge. Thus, the movant's opinion of value violates Fed. R. Evid. 701(c), which forbids lay witnesses to render opinions "based on scientific, technical, or other specialized knowledge."

Further, by admitting that his opinion of value is based on information and belief, the movant admits that he has no personal knowledge of how that opinion was formed. In other words, the movant does not know whether his opinion of value is based on sufficient facts or data and is the product of reliable principles and methods, as required by Fed. R. Evid. 702(b) and (c).

The movant also admits that he does not have the personal knowledge as required by Fed. R. Evid. 602. His declaration states nothing about him inspecting the subject property.

Finally, to the extent the movant's opinion of value is repeating statements made on websites or by other experts, such opinion is also inadmissible hearsay, in violation of Fed. R. Evid. 802.

Valuation evidence based on reports from "zillow.com" and other similar Internet based sources are particularly troublesome. This evidence was not admissible. It is hearsay. See Fed. R. Evid. 801. And, while Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria. The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a participatory site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Due to the lack of admissible evidence of value, the court cannot determine whether and to what extent the movant's interest in the property is adequately protected. Accordingly, the motion will be denied as to the estate.

17. 14-23174-A-7 JOHN/GUADALUPE WILLIAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 6-20-14 [20]
GREEN TREE SERVICING, L.L.C. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need

to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Lodi, California. The property has a value of $167,822 and it is encumbered by claims totaling approximately $254,229. The movant's deed is in first priority position and secures a claim of approximately $215,979.

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 1, 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.

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.

18. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-1
VS. WELLS FARGO BANK NEVADA — 6-5-14 [41]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Wells Fargo Bank for the sum of $6,006.20 on September 2, 2003. The abstract of judgment was recorded with Tehama County on October 22, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California.

According to Schedule A, the property actually consists of "[t]wo separate commercially zoned real properties located at 8320 Hwy. 99 East Los Molinos, CA 96055, consisting of an old motel w/13 rooms[,] Krishna Reddy is 50% owner of both pieces of property." The two assessor parcel numbers for the properties

are listed as "APN: 078-120-731" and "APN: 078-120-741." Docket 12, Schedule A.

The debtor that the lien on the two real properties be avoided.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $350,000 as of the date of the petition. The unavoidable liens total $37,910.09, consisting of a mechanics lien of $524.20 in favor of Dudleys Excavating, Inc., and a property tax lien for $37,385.89 in favor of Tehama County Tax Collector. This leaves $312,089.91 of equity in the property. The debtor's interest in that equity is 50% or $156,044.95. The debtor claim an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C.

The motion will be denied for several reasons.

First, the debtor has not established his entitlement to the claimed exemption. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

The debtor's exemption is pursuant to Cal. Civ. Proc. Code § 704.730(a)(3), which provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the

judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

The debtor's declaration in support of this motion does not establish that he is 65 years of age or older and does not establish any of the other conditions specified in Cal. Civ. Proc. Code § 704.730(a)(3)(B) & (C).

Second, in Schedule A, the debtor unequivocally states that the subject property is actually "[t]wo separate commercially zoned real properties." The court does not understand then why the debtor is entitled to an exemption of $175,000 in both properties under Cal. Civ. Proc. Code § 704.730(a)(3), when that statute allows a homestead exemption in only one property, the debtor's principal dwelling, not commercial property.

"Homestead" is defined by Cal. Civ. Proc. Code § 704.710(c) as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead."

"Dwelling" is defined by Cal. Civ. Proc. Code § 704.710(c) as "a place where a person resides."

Third, even assuming the properties were residential rather than commercial properties, the debtor could not have possibly been residing in both properties on the petition date.

Fourth, while the debtor has assigned a value for the property in Schedule A, his valuation of the property in connection with this motion is based "on an opinion of value from Hubbard Vanderjack[,] a Licensed California Real Estate Agent." Docket 44 at 2.

However, because the court does not have a declaration from Mr. Vanderjack about the value of the property, the debtor's reference to Mr. Vanderjack's valuation statements is inadmissible hearsay. Fed. R. Evid. 802.

Accordingly, the motion will be denied.

19. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-2
VS. CITIBANK (SOUTH DAKOTA), N.A. — 6-5-14 [46]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of $3,630.98 on August 4, 2003. The abstract of judgment was recorded with Tehama County on September 2, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

20. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-3
VS. GEORGE AND BETTY HARMS — 6-5-14 [51]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of George and Betty Harms for the sum of $417,012.77 on June 22, 2003. The abstract of judgment was recorded with Tehama County on August 14, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

21. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-4
VS. BETTY SHEASGREEN — 6-5-14 [56]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Betty Sheasgreen for the sum of $1,293,000 plus costs on May 24, 2002. The abstract of judgment was recorded with Tehama County on August 2, 2002. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

22. 14-25687-A-7 JUDY FAUST — MOTION TO DISMISS DUPLICATE CASE
6-4-14 [7]

Tentative Ruling: The motion will be granted.

The debtor requests dismissal of this case, filed on May 30, 2014, on the basis that she erroneously filed two cases. The other case is Case No. 14-11892, filed on April 14, 2014. Given the erroneous filing of the two cases, this case (Case No. 14-25687) will be dismissed. No other relief will be granted.

THE FINAL RULINGS BEGIN HERE

23. 09-44202-A-7 JACOB SCHILDGEN
GJS-4
VS. PACIFIC BELL DIRECTORY

MOTION TO
AVOID JUDICIAL LIEN
6-4-14 [33]

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 Pacific Bell Directory for the sum of $51,372.36 on August 24, 2006. The abstract of judgment was recorded with Sacramento County on September 11, 2006. That lien attached to the debtor's one-third interest in a residential real property in Sacramento, 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 $235,000 as of the date of the petition. The unavoidable liens total $182,000 on that same date, consisting of a single mortgage in favor of CU Members Mortgage. This leaves $53,000 in equity. As the debtor owns only a one-third interest in the property, his share of the equity in the property is approximately $17,666. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 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).

This ruling affects only the debtor's one-third interest in the subject property. This ruling does not effect any liens against anyone's interest in the remainder two-thirds of the property.

24. 09-44202-A-7 JACOB SCHILDGEN
GJS-5
VS. SYSCO FOOD SERVICES OF SACRAMENTO, INC.

MOTION TO
AVOID JUDICIAL LIEN
6-4-14 [36]

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 Sysco Food Services of Sacramento, Inc. for the sum of $7,920.61 on December 9, 2004. The abstract of judgment was recorded with Sacramento County on January 13, 2005. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $235,000 as of the date of the petition. The unavoidable liens total $182,000 on that same date, consisting of a single mortgage in favor of CU Members Mortgage. This leaves $53,000 in equity. As the debtor owns only a one-third interest in the property, his share of the equity in the property is approximately $17,666. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 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).

This ruling affects only the debtor's one-third interest in the subject property. This ruling does not effect any liens against anyone's interest in the remainder two-thirds of the property.

25. 14-22703-A-7 KERRY CHITWOOD — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 6-3-14 [13]
THE BANK OF NEW YORK MELLON 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, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Stockton, California.

Given the entry of the debtor's discharge on July 2, 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

$117,000 and it is encumbered by claims totaling approximately $239,415. 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 15, 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.

26. 13-33618-A-7 CAROLE BAIRD — MOTION TO APPROVE COMPROMISE
DNL-8 — 6-13-14 [118]

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 Erica Racz, resolving competing ownership claims in real property in Baja California Sur, Mexico and a California partnership, named Quatro Buenos Amigos, which owns the property in Mexico. As QBA owns only the real property in Mexico, its value is the same as the value of the property.

QBA originally had four partners, each with 25% stake. The partners consisted of two couples, the MacKenzies and the Raczs. The MacKenzies transferred their

50% to the Raczs, who then divorced, leaving Mr. Racz with 100% interest in QBA. Mr. Racz then married the debtor and by agreement transmuted his interest in QBA to community property status. Approximately four years later, Mr. Racz and the debtor divorced.

The family court judgment, entered on January 31, 2006 and effective January 9, 2006, declared that Mr. Racz held a separate property reimbursement claim for 75% of the value of the property. The property was valued at $120,000 and Mr. Racz's separate property claim amounted to $90,000. Mr. Racz's separate and community property interests in QBA amounted to $105,000, consisting of the $90,000 separate property claim and 50% of the community property portion of the property (50% of $30,000). The judgment ordered Mr. Racz to pay $15,000 to the debtor for her community property interest and ordered him to pay her another $5,400 in rental value for his exclusive use of the property from the time of separation until entry of the judgment.

Mr. Racz passed away on June 19, 2008 in Mexico without a will, being survived by one adult child, Erica Racz. His death certificate reflects that he was married to the debtor. Based on this and the purported fact that she reconciled with Mr. Racz prior to his passing, the debtor has argued that she inherited 100% in QBA and the real property.

Erica Racz disputes this and asserts that Mr. Racz paid all amounts ordered by the divorce judgment to the debtor. The debtor has not cooperated with the trustee in responding to the assertions of Erica Racz.

Under the terms of the compromise, the trustee will sell QBA and the property in Mexico, this estate will receive one-third of the net proceeds from the sale, Erica Racz will receive two-thirds of the net proceeds from the sale, and 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. That is, given the debtor's lack of cooperation with the trustee in responding to Erica Racz's assertions, given that the debtor has provided no evidence of remarriage to Mr. Racz, given that the family court judgment awarded the debtor only a 12.5% in QBA and the property, in the form of a money judgment against Mr. Racz, given that Erica Racz claims that Mr. Racz paid that judgment, along with the rental value judgment, to the debtor, 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.

27. 14-21727-A-7 GERALD/RUTH NORRIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 6-6-14 [16]

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Redding, California.

Given the entry of the debtor's discharge on June 12, 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 $149,917 and it is encumbered by claims totaling approximately $214,459. The movant's deed is in second priority position and secures a claim of approximately $147,257.

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.

28. 12-24831-A-7 RANDEEP DEOL
HSM-10

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-6-14 [119]

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 second and final motion for approval of compensation. The requested compensation consists of $16,226 in fees and $587.36 in expenses, for a total of $16,813.36. This motion covers the period from August 1, 2013 through July 11, 2014. The court approved the movant's employment as the trustee's attorney on June 1, 2012. 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 the merits of a $200,000 promissory note executed by the Natts, (2) reviewing the motions to withdraw filed by the debtor's counsel, (3) prosecuting claims for the denial of the debtor's discharge and the collection of the $200,000 note, including reviewing and analyzing discovery responses, and (4) preparing and filing compensation motions.

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

29. 14-25339-A-7 BRIAN/NORMA PERTL
PD-1
CITIMORTGAGE, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-14 [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, Citimortgage, Inc., seeks relief from the automatic stay as to real property in Citrus Heights, California. The property has a value of $160,000 and it is encumbered by claims totaling approximately $167,110. 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.

30. 14-24040-A-7 ELSA CARDOZA — MOTION FOR
PRK-1 — RELIEF FROM AUTOMATIC STAY
MCLAREN TRUST #5901 VS. — 6-26-14 [15]

Final Ruling: The motion will be dismissed without prejudice.

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

Second, the notice of hearing that is part of the motion does not advise respondents whether and when written opposition must be filed, in violation of Local Bankruptcy Rule 9014-1(d)(3).

Finally, the motion was not served on the debtor. Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service on the debtor's attorney to the exclusion of the debtor. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

31. 13-34845-A-7 SHARON SMITH
HCS-4

MOTION TO
EMPLOY REALTOR
6-6-14 [64]

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

The motion will be granted.

The trustee requests approval to employ Ronald Nakano of Coldwell Banker as a real estate broker for the estate. Mr. Nakano will assist the estate with the valuing and possible listing for the sale of the estate's one-sixth interest in two multi-unit real properties in Emeryville, California.

Mr. Nakano has valued the property interest and, as a result, the debtor's mother has made an offer to purchase the estate's interest in the properties. If Mr. Nakano's services are limited to his valuation of the properties and will not require the listing and marketing of the properties, his proposed compensation is $110 an hour.

Alternatively, in the event Mr. Nakano will have to list and market the properties for sale, his proposed compensation will be a 5% commission if he is the only broker in the sale transaction or 6% commission if a buyer's agent is employed.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Nakano is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

32. 10-31367-A-7 KYLE/LORI KRUEGER
HCS-3

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-13-14 [129]

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 costs (reduced from $10,594 in fees and $436.23 in expenses, for a total of $11,030.23). This motion covers the period from June 23, 2010 through the present. The court approved the movant's employment as the trustee's attorney on June 28, 2010. In performing its services, the movant charged hourly rates of $195, $225, $250, $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) reviewing petition documents and other evidence in determining whether to object to exemptions and object to the entry of discharge, (2) preparing and filing stipulations for extensions of the deadline to object to discharge, (3) advising the trustee about a stay relief motion and an abandonment motion, (4) investigating transfers of two vehicles by the debtors, (5) negotiating compromise over the transferred vehicles, (6) preparing the settlement and motion to compromise, and obtaining order approving the compromise, 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.

33. 14-25179-A-7 RENATA SWIERAD — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-12-14 [11]
SANTANDER CONSUMER U.S.A., 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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2004 Acura MDX. The movant has produced evidence that the vehicle has a value of $10,700 (value in Schedule B is $6,165) and its secured claim is approximately $21,606.

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 June 26, 2014. The debtor has

also 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.

34. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-5
VS. BUTTE COUNTY CREDIT BUREAU — 6-5-14 [36]

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 Butte County Credit Bureau, a California corporation, without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 40.

The court also notes that Butte County Credit Bureau has an agent for service of process registered with the California Secretary of State.

Further, the debtor should note that the page reflecting the recordation date for Butte County Credit Bureau's abstract of judgment is illegible. Docket 38 at 3. The court cannot tell in which county the abstract of judgment was recorded.

Further, even in the absence of the foregoing deficiencies, the court cannot grant the motion for the reasons stated in the court's ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

35. 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 by the moving party to July 28, 2014 at 10:00 a.m. Docket 21.

36. 14-22097-A-7 JUSTIN ELLIOTT
NLG-1
RESIDENTIAL CREDIT SOLUTIONS, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-11-14 [35]

Final Ruling: The motion will be dismissed without prejudice because the debtor's counsel was served at an incorrect address, on W. San Carlos St. The debtor's counsel changed his address with the court on May 5, 2014, before this motion was filed and served, providing a new address, on Gateway Place.