**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**July 18, 2016 at 10:00 a.m.**

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

2, 7, 13

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

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

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

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

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

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

**TO DEVELOP THE WRITTEN RECORD FURTHER.**

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON AUGUST 15, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 1, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 8, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

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

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

## *MATTERS FOR ARGUMENT*

1. 16-23509-A-7 ROGELIO/NORA DARIO — MOTION TO AVOID JUDICIAL LIEN
SNM-1 — 6-9-16 [9]
VS. CAPITAL ONE BANK (USA), N.A.

**Tentative Ruling:** The motion will be denied without prejudice.

The debtors seek to avoid a judicial lien on their real property in Fairfield, California.

The motion will be denied because it is not supported by admissible evidence. While the supporting declaration refers to a recorded abstract of judgment, such abstract is not part of the record on the motion. Docket 11. The references to the abstract and statements in the abstract are hearsay. Fed. R. Evid. 802.

2. 08-37910-A-7 MARK JOCOY — MOTION TO PAY
DNL-10 — 6-24-16 [138]

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

The motion will be granted.

The trustee seeks authority to pay $1,541.96 in ongoing homeowner's association fees for the condominium real property in San Felipe, Mexico. The estate owns a 50% interest in the condominium. In addition to leasing the property, the trustee is also marketing it for sale. The HOA has sought ongoing HOA payments, pending sale of the property, as the trustee is leasing the property. The HOA is owed approximately $18,500.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

The court has granted authority for the trustee to lease the condominium, given the anticipated extended marketing period for the property. The HOA fees cover common area maintenance expenses for the property, making them actual and necessary costs for preserving the condominium and the estate's interest in it. Thus, the court will authorize payment of $1,541.96 in ongoing HOA fees.

In addition, 11 U.S.C. § 363(b) allows the trustee to use, sell or lease property of the estate, other than in the ordinary course of business. Paying HOA fees is an integral part of any leasing administration of real property. Hence, the trustee may pay the subject HOA fees also in conjunction with the

estate's authority to lease the property. The motion will be granted.

3. 12-22720-A-7 MICHAEL SHOWALTER — MOTION TO SELL AND TO PAY 6-27-16 [89]
DNL-6

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for $120,000 real property in Lecanto, Florida. The estate owns only one-third interest in the property. The other two-thirds tenancy-in-common interest in the property is held by the debtor's siblings or their successors in interest. The debtor's brother transferred his one-third interest to his wife. The remaining one-third interest is still held by the debtor's sister. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission (one-third of 6%) to the estate's real estate broker, Keller Williams.

The co-owners have consented to the trustee's sale of the property.

Except for outstanding property taxes, the property is unencumbered. There are no exemption claims against the property either. The estate's tax liability from the sale is expected to be approximately $384. The trustee anticipates generating approximately $36,440 for the estate.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate.

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

4. 11-33730-A-7 STEADROY IRISH — MOTION TO AVOID JUDICIAL LIEN 6-15-16 [38]
SJS-2
VS. CITIBANK (SOUTH DAKOTA), N.A.

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of $21,894.71 on August 17, 2010. The abstract of judgment was recorded with Sacramento County on April 19, 2011. That lien attached to the debtor's residential real property in Elk Grove, California. The debtor seeks avoidance of the lien.

The motion will be denied because the supporting declaration states that the value of the subject property is $274,385, based on what Schedule A says about the value of the property. Docket 40. But, the Schedule A attached to the motion states that the value of the property is $109,185. Docket 41. The court cannot grant the motion unless and until this discrepancy is corrected.

Moreover, what the debtor's schedules say about the value of the property is not evidence or admissible evidence in support of value. The court needs evidence of value from the debtor in the record of this motion, such as a declaration stating the debtor's opinion of value for the property as of the

petition date.

5. 14-31031-A-7 ROCHELLE MANNING-KLAR — MOTION TO RESERVE ASSET UPON CLOSING OF THE CASE
SCB-2 — 6-20-16 [21]

**Tentative Ruling:** The hearing on the motion will be continued for the limited purpose of noticing the motion on the present trustee of the family trust (Jeannie Bryan), under which the estate's interest in the real property arises. The record on the motion is otherwise closed and the court's ruling on the merits follows below.

The trustee is asking the court to retain jurisdiction over the estate's partial contingent interest in a real property in Auburn, California, derived from a beneficiary interest in a family trust.

Under the terms of the trust, the estate's interest is in a halfplex. According to the motion, "this [halfplex] property [(178 E. Hillcrest Drive)] cannot be sold until the occupant, Daniel G. Filipiak, of the joined duplex property, located at 176 E. Hillcrest Drive, Auburn, CA 95603, dies, remarries or moves out." Docket 1, Schedule B.

The trustee also asks that the court not retain jurisdiction over the estate's claims against the family trust trustee for failure to collect and distribute rents from the real property to the beneficiaries under the trust.

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

First, the debtor's response to the motion was filed late and it will be stricken. It was filed on July 5, 2016, whereas it was due on Friday July 1, 2016. Docket 27. This motion was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(1), which requires written opposition to be filed and served at least 14 days prior to the July 18 hearing. The time for filing written responses to motions is calculated by counting of the 14 days from the hearing backward. Local Bankruptcy Rule 9014-1(f)(1)(B) refers to the 14 day deadline for responses as "preceding the date . . . of the hearing."

Fed. R. Bankr. P. 9006(a)(1)(C) (regarding the counting of days in a period stated in days, prescribing to "include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

As the fourteenth day fell on Monday July 4, a legal holiday, the next day that is not a Saturday, Sunday, or legal holiday was Friday July 1. Yet, the debtor's response was not filed until Tuesday July 5. Docket 27.

Second, even if the court were to consider the debtor's response, it is unsupported by admissible evidence. None of the factual assertions in the response are supported by a declaration or similarly admissible evidence. Docket 27. For instance, the assertion of other trust beneficiaries with interest in 178 E. Hillcrest is unsupported by admissible evidence.

Third, even if the court were to ignore the procedural and evidentiary deficiencies of the response, the objection to the motion that it seeks two different types of relief is disingenuous. The trustee is merely seeking to clarify that he is not asking for the court to retain jurisdiction over the estate's claims against the family trust trustee. The court will not be ordering any relief as to the claims against the family trust trustee. They will be abandoned by operation of law when the case closes. 11 U.S.C. § 554(c).

Fourth, the court rejects that the trustee should be required to sell the estate's contingent interest in the real property at the present time. The court will not meddle in the trustee's decisions about how to administer the estate, absent a showing that the trustee's actions are not in the best interest of the creditors and the estate. The debtor has not made such a showing. The response complains only about the debtor's and third-party's burdens that would result from the relief requested by the motion. It says nothing about the creditors or the estate.

The court also notes that the debtor herself stated in Schedule B, under the penalty of perjury, that the present value of the property interest has a value of $0.00. This begs the question of how the debtor could argue – in good faith – now that the trustee should sell the property interest now, prior to trust distribution.

Fifth, the debtor's mention of other trust beneficiaries, who are also "in line to receive an ownership interest in this property," is also disingenuous. It is not supported by admissible evidence and the debtor is the sole beneficiary under the trust as to 178 E. Hillcrest. This does not concern the other half of the duplex subject of the trust, 176 E. Hillcrest.

Sixth, even if the debtor may not have a relationship with Daniel G. Filipiak, the person upon whom distribution of 178 E. Hillcrest hinges, the debtor has a relationship with the family trust trustee, who is in charge of administering the assets of the trust, including 176 E. Hillcrest, where Mr. Filipiak lives. The family trust trustee is in charge of administering the trust. This includes knowing if and when Mr. Filipiak vacates 176 E. Hillcrest, remarries, or passes away. It also includes notifying the estate and the debtor – who asserts a $22,812 exemption in the property trust interest – if and when any of the conditions pertaining to Mr. Filipiak are fulfilled. The family trust trustee owes fiduciary duties to both the bankruptcy estate and the debtor. Thus, it is not unreasonable to order the debtor to notify the estate if and when she finds out that the conditions for distribution of 178 E. Hillcrest have been met. This is consistent with and part of the debtor's obligations under 11 U.S.C. § 521(a)(3) to cooperate with the trustee.

Waiting until distribution of 178 E. Hillcrest under the trust would be in the best interest of the creditors and the estate. The value of the estate's present property interest under the trust is minimal, as evidenced by the debtor's own admission of $0.00 value in Schedule B. Docket 1.

On the other hand, once the conditions for distribution under the trust are met, the value of the estate's property interest under the trust will be substantial. 178 E. Hillcrest is unencumbered. Docket 23 at 2. And the debtor's exemption in the trust property asset is only $22,812.

The unsecured claims in the case total only approximately $21,700, which figure includes approximately $1,700 in priority claims.

An unencumbered half-plex in Auburn, California will generate more than enough to pay the debtor's $22,812 exemption claim and all $21,700 in unsecured claims.

In addition, the conditions for distributions under the trust are well defined. They include the Mr. Filipiak's leaving 176 E. Hillcrest, his remarriage, or his passing. The family trust trustee administers both 178 E. Hillcrest and 176 E. Hillcrest, meaning that she is charged with monitoring and knowing when these condition occur. When the conditions are satisfied, the trustee "shall" make distributions of the two half-plexes. Docket 25, Ex. A at 3-4.

Further, the conditions for distribution of the estate's halfplex are not likely to occur any time soon. This case has been pending since November 2014, nearly 20 months, yet no condition has been satisfied. From this, the court infers that the conditions for distribution are unlikely to occur in the near future.

See, e.g., In re Hart, 76 B.R. 774, 777 (Bankr. C.D. Cal. 1987) (outlining three factors to be considered when retaining jurisdiction over an asset prior to closing of a bankruptcy case, including:

"*(1) A reasonable possibility must exist that an asset valuable enough to pay substantial dividends to the creditors may be recovered in the future. A potential recovery of minimal value to the creditors would not be sufficient reason to except a claim from abandonment.*

"*(2) The event that will trigger the reopening of the case for distribution of that asset must be well-defined. It should not require any further action by any representative of the estate, for if action is required, then the Chapter 7 Trustee should not be discharged until the necessary steps are completed.*

"*(3) The events that may result in payment to the estate must not be likely to occur soon, for if the asset was expected to be liquidated within say, a year, the case should probably be kept open until then.*").

Accordingly, the motion will be granted. The court will retain jurisdiction over the estate's interest in 178 E. Hillcrest under the trust upon closing of the case. The court will also order that the debtor and family trust trustee report in writing to the United States Trustee when the condition for distribution of 178 E. Hillcrest under the trust occurs. This report shall be made within seven days of actual knowledge of that any condition for distribution has been satisfied.

The court will not enjoin the debtor from transferring any interest in the half-plex. This is unnecessary as the granting of this motion preserves the estate's interest in the property after closure of the case.

6. 15-24432-A-7 CAROLYN INDREBOE — MOTION TO SELL
CDH-2 — 6-15-16 [21]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" for $7,500 the estate's unencumbered interest in 50% of the shares in the issued and outstanding common stock of Dutycalc Data Systems, Inc. to the debtor. In addition, as additional consideration for the purchase, the debtor has agreed

to waive her $2,500 exemption in the stock. This makes the total proposed purchase price $10,000.

Upon investigation, the trustee has determined that the proposed purchase price is "a fair market price."

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

7. 10-52136-A-7 SETH SUNGA
HSM-10

MOTION FOR APPROVAL OF MODIFICATION OF COMPROMISE ETC
6-27-16 [113]

**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 requests approval of a modification of a settlement agreement this court approved on April 2, 2013 (Docket 103) between the estate and the debtor, resolving the debtor's pre-petition dissipation of $110,000 he received as insurance proceeds for the passing of his spouse.

Under the previously approved agreement, the debtor executed a $40,857.32 promissory note in favor of the estate, due and payable in full five years after the "Approval Date." If the debtor had paid off the note within six months of the Approval Date, he would have received an additional 30% discount on the note amount. If the debtor had paid off the note within 12 months of the Approval Date, he would have received only an additional 20% discount on the note amount. If the debtor had paid off the note within 18 months of the Approval Date, he would have received only an additional 10% discount on the note amount.

The note provided for minimum monthly payments of $250 for the first 18 months after approval, $350 a month for the next 18 months, $425 a month for the following 12 months, and $500 a month for the last 12 months of the note term.

The minimum payments under the note during the five-year note term total $21,900 and any remaining amount under the note was due and payable on or about April 2, 2018, five years after the April 2, 2013 Approval Date. Assuming only minimum note payments were made during the five-year note period, a balloon

payment of $18,957.32 was due at the end of the five-year period.

Interest did not accrue on the note amount only during the first 18 months of the note term. After that, the outstanding amount under the note accrued interest of 4%. Default interest during the first 18 months of the note term was 4% and increased to 8% after the first 18 months. A default under the note made all outstanding sums due under the note immediately due and payable at the option of the trustee.

The debtor has made only the minimum note payments thus far. More than 18 months have passed since the April 2, 2013 Approval Date and the debtor is no longer entitled to any discounts.

Under the proposed modification of the settlement, the debtor will make an $8,500 lump sum payment to the estate, while having paid $20,350 already (total $28,850), in exchange for a discount of the $12,007.32 remainder owed under the note ($40,857.32 minus $28,850).

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 trustee's inability to sell the note during the last approximately three years, given the acceleration of collection under the note and corresponding distribution to creditors, given the debtor's history of making only minimum payments under the note, given that the debtor has had to borrow funds to make the subject lump sum payment, given the risk of the debtor defaulting on the large balloon payment due and payable in another 20 months, and given the further costs, risks and delay of additional litigation during the next 20 months, the modification to the settlement is equitable and fair.

Therefore, the court concludes the modification to 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.

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| 8. | 09-20140-A-7<br>JWR-1 | SHASTA REGIONAL MEDICAL CENTER, L.L.C. | MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE<br>6-17-16 [819] |

**Tentative Ruling:** The movant has sought to dismiss this motion, after the U.S. Trustee filed a response. Docket 837. Subject to hearing from the U.S. Trustee, the court is inclined to dismiss the motion.

9. 16-23040-A-7 MARK TARASOV — MOTION TO DISMISS CASE
JMH-1 — 6-16-16 [21]

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

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on June 15, 2016.

Although the debtor has filed a notice of hearing on the motion to dismiss, he has provided no explanation for his failure to appear at the June 15 meeting of creditors. Docket 25. The debtor's failure to appear at the meeting of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

10. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 7-28-15 [71]
WELLS FARGO BANK, N.A. VS.

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

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

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

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

11. 11-34464-A-7 STUART SMITS — APPLICATION AND ORDER TO APPEAR FOR EXAMINATION (STUART LANSING SMITS)
11-2636 — 10-14-15 [61]
BARDIS V. SMITS

**Tentative Ruling:** None. The judgment debtor shall appear and be sworn in prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

12. 15-29268-A-7 JOANNE GODREAU — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 — 6-19-16 [54]
SETERUS, INC. VS.

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

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Fairfield, California.

Given the entry of the debtor's discharge on March 14, 2016, the automatic stay

has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. On June 8, 2016, only 11 days prior to the filing of this motion, the court entered an order authorizing the trustee to sell the subject property. Docket 53. Given this, the court is unwilling to grant stay relief as to the estate.

13. 14-21184-A-7 SIMON RAMSUBHAG — MOTION TO APPROVE COMPROMISE
HCS-2 — 6-27-16 [41]

**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 requests approval of a settlement agreement between the estate and Dan Sahadeo and Ray Sahadeo, who are brothers, resolving the estate's $100,000 loan claim against them. The claim is based on the debtor's loan of the funds to the Sahadeos for the purpose of them investing in real property.

Under the terms of the compromise, the Sahadeos have offered, and already paid, $47,547.98 to the estate in full satisfaction of the loan claim. The sum includes compensation for some of the trustee's attorney's fees in litigation against the Sahadeos, pertaining to the loan claim. Even after reaching the subject settlement with the Sahadeos, the trustee has had to conduct extensive litigation – including filing of an adversary proceeding – to implement the terms of the subject settlement.

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 trustee's difficulties negotiating the subject settlement and then obtaining the agreed payment under the settlement from the Sahadeos, given that the underlying loan was not reduced to writing, given the conflicting accounts of the loan terms by the different parties, 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.

***FINAL RULINGS BEGIN HERE***

14. 14-30201-A-7 SHARON GILLAM — MOTION TO EMPLOY
DNL-3 — 6-15-16 [48]

**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 sseks to employ Gonzales & Sisto as accountant for the estate. G&S will assist the estate with tax-related accounting services and the preparation of tax returns. The proposed compensation is a flat fee of $1,500. The movant also requests approval of payment of the compensation, without further order of the court.

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. G&S 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.

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

15. 16-22310-A-7 MARISELA CASTANEDA — MOTION TO CONVERT CASE
MKM-1 — 6-9-16 [27]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200. 11 U.S.C. § 109(e).

The court has reviewed the record and concludes that the debtor is not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtor has approximately $500 in regular monthly net income. Docket 29 at 3. The income appears to be regular as it is generated by the debtor's employment as a manager at a beauty salon, a job she has held for eight years.

And, the debtor has noncontingent, liquidated secured debt in amount less than $1,184,200 (actual amount is $127,860) and noncontingent, liquidated unsecured debt in amount less than $394,725 (actual amount is $26,222). Docket 29 at 3. Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

To the extent necessary, the court will reserve jurisdiction to rule on any compensation motions by the chapter 7 trustee and the estate's professionals, for 45 days after entry of the conversion order.

16. 16-22310-A-7 MARISELA CASTANEDA
SCB-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-20-16 [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 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.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,211.11, reduced from $3,150 in fees and $141.11 in expenses. This motion covers the period from May 19, 2016 through the present. The court approved the movant's employment as the trustee's attorney on May 25, 2016. In performing its services, the movant charged hourly rates of $150 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing assets of the estate, (2) assisting the trustee with the evaluation of estate assets, (3) 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.

17. 16-22310-A-7 MARISELA CASTANEDA — MOTION TO APPROVE COMPENSATION OF TRUSTEE
SCB-4 — 6-20-16 [39]

**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 chapter 7 trustee seeks approval of $1,200 in fees and $0.00 in expenses, for his work in this case, which is being converted to chapter 13.

When a chapter 7 case is converted to chapter 13 due to no fault of the trustee, the compensation formula of 11 U.S.C. § 326(a) does not apply and the trustee's compensation does not have to be based on estate distributions.

"The limitations on trustee compensation in § 326(a) should not apply when funds are returned to the debtor because of a dismissal. Where the trustee has rendered services the debtor will be unjustly enriched, upon dismissal, unless the trustee is compensated. Bankruptcy courts have exercised their powers by conditioning the return of property to the debtor upon payment of compensation to the trustee."

In re Flying S Land & Cattle Co., Inc., 23 B.R. 56, 58 (Bankr. C.D. Cal. 1982); see also In re Hages, 252 B.R. 789, 795 (Bankr. N.D. Cal. 2000) (citing Flying S Land with approval in the context of chapter 7 trustee compensation after conversion of the case to chapter 13).

On this calendar, the court is granting the debtor's motion to convert to

chapter 13. Thus far, there have been no distributions to creditors.

As there have been and there will be no distributions to creditors by the estate, the trustee's compensation cannot be granted on the basis of 11 U.S.C. § 326(a), given that such compensation is based "upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." 11 U.S.C. § 326(a).

On the other hand, the chapter 7 trustee has discovered over $50,000 in nonexempt equity in the debtor's real property, from which the estate's creditor's would benefit. The debtor's chapter 13 plan proposes a 100% dividend to unsecured creditors, whose claims total $26,222. Docket 30.

That is why the court is persuaded that the trustee is entitled to reasonable compensation for his services to the estate. The trustee reviewed the petition documents filed by the debtor, investigated the value of the debtor's real property, reviewed the claims in the case, and retained professionals to assist him in the administration of the estate.

The requested compensation represents four hours of services at an hourly rate of $300.

The court concludes that the hourly rate is reasonable and that the compensation is for actual and necessary services rendered from April 18, 2016 through June 14, 2016 in the administration of this estate. The motion will be granted.

18. 16-22310-A-7 MARISELA CASTANEDA — MOTION TO APPROVE COMPENSATION OF REALTOR
SCB-5 — 6-20-16 [44]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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.

Bob Brazeal of PMZ Real Estate, the real estate broker for the estate, seeks first and final approval of compensation in the amount of $247.50 in fees and $0.00 in expenses. The court approved the movant's employment as the trustee's real estate broker on May 27, 2016. The subject services were rendered from May 8, 2016 through May 19, 2016. The requested compensation is based on an hourly rate of $110.

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 assisting the trustee with the inspection and valuing of the debtor's real property in Lathrop, Oregon.

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

19. 14-26623-A-7 ROBERT/NICHOLA DANIEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS. — 6-15-16 [144]

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

The motion will be dismissed as moot.

The movant, Americredit Financial Services, seeks relief from the automatic stay with respect to a 2011 Nissan Titan vehicle.

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

The petition here was filed on June 25, 2014 as a chapter 13 case and was converted to chapter 7 on March 15, 2016. The meeting of creditors in the converted chapter 7 case was first convened on April 25, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 14. The debtor filed a statement of intention on April 15, 2016, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor filed a statement of intention, such statement was filed late, on April 15, 2016, after the April 14, 2016 deadline. Docket 128. 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 April 14, 2016, 30 days after the conversion date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 23, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 14, 2016.

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.

20. 16-22625-A-7 ALBERTO/MARIA HUERTA — MOTION TO AVOID JUDICIAL LIEN
SLH-1
VS. HOUSEHOLD FINANCE CORP. OF CA — 5-25-16 [11]

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

The motion will be granted.

A judgment was entered against the debtor Alberto Huerta in favor of Household Finance Corporation of California for the sum of $20,343.01 on April 13, 2009. The abstract of judgment was recorded with Placer County on July 13, 2009. That lien attached to the debtor's residential real property in Lincoln, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $301,951 as of the petition date. Dockets 13 & 14. The unavoidable liens totaled $288,076 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. Docket 14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000. Dockets 1 & 14.

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).

21. 16-22625-A-7 ALBERTO/MARIA HUERTA — MOTION TO AVOID JUDICIAL LIEN
SLH-2
VS. CAPITAL ONE BANK (USA), N.A. — 5-25-16 [16]

**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 Mrs. Huerta in favor of Capital One Bank for the sum of $3,702.62 on March 24, 2009. The abstract of judgment was recorded with Placer County on July 8, 2009. That lien attached to the debtor's residential real property in Lincoln, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $301,951 as of the petition date. Dockets 18 & 19. The unavoidable liens totaled $288,076 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. Docket 19. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000. Dockets 1 & 19.

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).

22. 16-22625-A-7 ALBERTO/MARIA HUERTA — MOTION TO AVOID JUDICIAL LIEN
SLH-3
VS. CAPITAL ONE BANK — 5-25-16 [21]

**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 Mr. Huerta in favor of Capital One Bank for the sum of $3,321.47 on February 27, 2009. The abstract of judgment was recorded with Placer County on October 23, 2015. That lien attached to the debtor's residential real property in Lincoln, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $301,951 as of the petition date. Dockets 23 & 24. The unavoidable liens totaled $288,076 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. Docket 24. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000. Dockets 1 & 24.

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).

23. 15-29734-A-7 DARIN/MELISSA ANASTASIO — MOTION TO AVOID JUDICIAL LIEN
SCR-1
VS. DEERE & COMPANY — 6-7-16 [53]

**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 Darin Anastasio in favor of Deere & Company, a corporation, for the sum of $32,527.70 on March 31, 2010. The abstract of judgment was recorded with El Dorado County on May 19, 2010. That lien attached to the debtors' residential real property in Shingle Springs, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $644,597 as of the petition date. Dockets 55, 1, 7. The unavoidable liens totaled $742,506.50 on that same date, consisting of a single mortgage for $740,432.50 in favor of OneWest Bank and a California Employment and Development Department tax lien for $2,074. Dockets 55 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Schedule C. Dockets 55, 1, 7.

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).

24. 15-29734-A-7 DARIN/MELISSA ANASTASIO — MOTION TO AVOID JUDICIAL LIEN
SCR-1
VS. KELKRIS ASSOCIATES, INC. — 6-7-16 [58]

**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 debtors in favor of Kelkris & Associates, Inc., for the sum of $2,081.62 on May 24, 2010. The abstract of judgment was recorded with El Dorado County on September 9, 2010. That lien attached to the debtors' residential real property in Shingle Springs, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $644,597 as of the petition date. Dockets 60, 1, 7. The unavoidable liens totaled $742,506.50 on that same date, consisting of a single mortgage for $740,432.50 in favor of OneWest Bank and a California Employment and Development Department tax lien for $2,074. Dockets 60 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Schedule C. Dockets 60, 1, 7.

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).

25. 15-29734-A-7 DARIN/MELISSA ANASTASIO — MOTION TO AVOID JUDICIAL LIEN
SCR-1
VS. RANCHO MURIETA ASSOCIATION — 6-7-16 [63]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 debtors in favor of Rancho Murieta

Association for the sum of $2,700 on January 27, 2012. The abstract of judgment was recorded with El Dorado County on February 7, 2013. That lien attached to the debtors' residential real property in Shingle Springs, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $644,597 as of the petition date. Dockets 65, 1, 7. The unavoidable liens totaled $742,506.50 on that same date, consisting of a single mortgage for $740,432.50 in favor of OneWest Bank and a California Employment and Development Department tax lien for $2,074. Dockets 65 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Schedule C. Dockets 65, 1, 7.

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).

26. 16-21834-A-7 MAGLAIZA REYES — MOTION TO APPROVE COMPROMISE
DMW-1 — 6-1-16 [12]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and the debtor and his parents on the other, over avoidance claims for the debtor's payment of approximately $7,500 to his parents over the two-year period prior to the March 24, 2016 filing date.

Under the terms of the compromise, the debtor will pay $3,000 to the estate in full satisfaction of the claims against his parents.

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 small amount at stake and 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. 16-23240-A-7 RHEA NUNEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
FIRST INVESTORS FINANCIAL SERVICES VS. — 6-16-16 [11]

**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, First Investors Financial Services, seeks relief from the automatic stay with respect to a 2010 Dodge Journey. The vehicle has a value of $3,000 and its secured claim is approximately $8,697.

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. And, the movant has possession of the vehicle already.

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

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

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

28. 10-48547-A-7 BRYAN GORE — MOTION TO AVOID JUDICIAL LIEN
BLC-2
VS. MILGARD MANUFACTURING CORP. — 6-22-16 [26]

**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 Milgard Manufacturing, Inc. for the sum of $11,034.86 on October 22, 2009. The abstract of judgment was recorded with Placer County on November 6, 2009. That lien attached to the debtor's residential real property in Rocklin, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $347,500 as of the petition date. Dockets 28 & 29. The unavoidable liens totaled $306,424 on that same date, consisting of a single mortgage in favor of National City Mortgage. Dockets 1 & 28. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $41,076. Dockets 28 & 29.

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).

29. 16-23247-A-7 ROSE FACIANE — MOTION FOR RELIEF FROM AUTOMATIC STAY
BDA-2 — 6-20-16 [42]
CARRINGTON MORTGAGE SERVICES, L.L.C. VS.

**Final Ruling:** The motion will be dismissed without prejudice because the proof of service accompanying the motion does not list anyone having been served with the motion. Docket 46.

30. 16-23548-A-7 HOWARD HAYES — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDW-1 — 6-20-16 [15]
CAM XIV TRUST VS.

**Final Ruling:** The motion will be dismissed without prejudice because the debtor was served at an incorrect address. The street address should be 945 and not 946. Docket 23.

Further, the notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

31. 15-21850-A-7 A.L.L. GROUPS, INC. MOTION FOR EXAMINATION
GCL-2 6-18-16 [57]

**Final Ruling**: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent, 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.

Creditor Umpqua Bank moves for an order permitting it to subpoena documents pertaining to the debtor's loan with the movant from Wells Fargo Bank. The movant extended a loan to the debtor pre-petition, which was guaranteed by the United States Small Business Administration. In connection with the loan and the SBA guaranty, the debtor was required to make a cash injection and to provide proof of the source for the cash injection funds. The debtor consummated the cash injection through one or more Wells Fargo Bank accounts.

Now that the loan is in default, the movant has applied for relief on the guaranty with the SBA. In connection with the movant's application, the SBA has requested the documents reflecting the debtor's cash injection and the source of the cash. Accordingly, the movant is seeking a Rule 2004 exam order, permitting it to subpoena from Wells Fargo Bank the statements of the account(s) from where the debtor's cash came from and the deposit records for those accounts.

Fed. R. Bankr. P. 2004(a)-(c) provides that:

"*(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.*

"*(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.*

*"(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS. The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending."*

The motion will be granted. The movant will be permitted to subpoena the identified documents from Wells Fargo Bank, as they relate to acts, conduct or property, or to the liabilities and financial condition, of the debtor. The documents shall be produced to the movant on at least seven days notice. The motion will be granted.

32. 16-22753-A-7 KATHERINE HOOKANO — MOTION FOR RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. — 5-25-16 [27]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Valley Springs, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

With respect to the debtor, the movant has proffered no evidence of value for the property. See 11 U.S.C. § 362(g) (imposing the burden of proof on the issue of equity on the moving creditor). And, the debtor has not listed an interest in the property in her schedules. As a result, the court cannot determine whether there is any equity in the property and whether the movant's interest in the property is adequately protected.

Nevertheless, the motion will be granted as to the debtor under section 362(d)(1) for cause because the property is not listed in the debtor's schedules, the movant's claim is also not listed in the debtor's schedules, and the borrower on the note secured by the property, Charles Sims, transferred partial joint tenancy interest in the property to the debtor on April 11, 2016, just 18 days prior to the April 29, 2016 petition filing date.

The debtor's Schedule A lists no interest in real property and Schedule D does not list the movant's claim. It lists only a claim secured by a vehicle. Docket 25.

The court will lift the stay as to the estate under section 362(d)(1) as well, given the trustee's June 2, 2016 report of no distribution, indicating that the estate will not be administering the property.

Thus, the motion will be granted as to both the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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

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

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

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

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

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

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

The debtor was added on title of the property on April 11, 2016, just 18 days prior to her filing this case. Docket 30, Ex. D. From this, the court infers that the filing of this petition was part of a scheme to delay, hinder, or defraud creditors that involved transfer of part ownership of the subject property, without the consent of the movant. The movant did not give its consent for the April 11 transfer. Accordingly, the court will grant relief under section 362(d)(4).

33. 11-40459-A-7 PHILIP/JOY BILL — MOTION FOR CONTEMPT
LDD-2 — 5-10-16 [197]

**Final Ruling**: The motion will be dismissed without prejudice because it was not served on the respondent creditor, R. Carl Knapp. Docket 204.

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 respondent's attorney to the exclusion of the respondent.

Moreover, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Accordingly, service is defective.

34. 16-23071-A-7 WALTER STEINMANN — MOTION TO VALUE COLLATERAL
EJS-1
VS. 800 LOANMART — 6-20-16 [14]

**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 "[u]pon 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 Wheels Financial Group, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 18.

The court also notes that the proffered value for the vehicle is not the required replacement value defined by 11 U.S.C. § 506(a)(2). The Carmax appraisal does not reflect what a retail merchant would charge for the vehicle. Rather, it reflects what a retail merchant would pay for the vehicle.

35. 14-22888-A-7 ROSS PEARSON AND MICHELLE WRIGHT — MOTION TO AVOID JUDICIAL LIEN
LBG-2
VS. SMW 104 FEDERAL CREDIT UNION — 6-28-16 [41]

**Final Ruling:** The movant has voluntarily dismissed this motion. Docket 49.

36. 16-23391-A-7 VANESSA WISNIEWSKI — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 6-14-16 [11]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2007 Mazda 3. The movant has produced evidence that the vehicle has a value of $6,425 and its secured claim is approximately $10,137. Docket 15.

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 28, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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