UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 28, 2014 at 10:00 a.m.

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

1, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 16

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 18, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 4, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 11, 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 FOR ARGUMENT

1. 14-24612-A-7 ROBERT WILBUR — MOTION TO DISMISS DUPLICATE CASE
LLL-2 — 6-24-14 19]

Tentative Ruling: The motion will be granted.

The debtor requests dismissal of this case on the basis that he erroneously filed this case, while he only wanted to convert his pending chapter 13 case to chapter 7. The now former chapter 13 case is Case No. 11-27350, which case was converted to chapter 7 on April 22, 2014. The instant case was filed on April 30, 2014. Given the erroneous filing of this case, this case (Case No. 14-24612) will be dismissed. No other relief will be granted.

2. 10-49713-A-7 SUSAN HULSEBOSCH — MOTION TO COMPEL ABANDONMENT
MET-1 — 6-30-14 [100]

Tentative Ruling: The motion will be denied without prejudice.

The debtor asks for the abandonment of a potential claim against her former spouse for outstanding child and/or spousal support. The debtor's original Schedule C, filed on November 10, 2010, the petition date, ascribes a value of "unknown" to the claim.

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

The movant has the burden of persuasion by preponderance of the evidence in establishing the requirements of 11 U.S.C. § 554(b). Vu v. Kendall (In re Viet Vu), 245 B.R. 644, 650 (B.A.P. 9th Cir. 2000).

The debtor contends that the support claim against her former spouse is of inconsequential value to the estate because she has fully exempted the claim. The debtor complains that the trustee has taken nearly four years to administer the case, "nor did she contemplate the second Stipulation would grant the Trustee a permanent extension of specific task - determining whether or not a claimed asset had value above the claimed exemption." Docket 103 at 3.

The trustee opposes abandonment, arguing that the deadline for objections to the debtor's exemption claim has not expired, given her March 22, 2010 stipulation with the debtor that "the Trustee's deadline to object to exemptions be extended from March 24, 2011, through and including 60 days after the Trustee obtains a recovery from the Debtor's former husband on the Support [claim] Asset." Dockets 29 & 30.

The trustee also points out that the support claim is property of the estate and that the debtor's "attempt to enter into a secret stipulation" with her former spouse to resolve the claim violated the automatic stay as to the estate.

The debtor counters that the stipulated extension of the exemption objection deadline is moot because she filed Amended Schedules B and C on April 5, 2011, to which the trustee never objected. Docket 31. The debtor argues then that

the stipulation with the trustee applied only to the exemption claimed in the original Schedule C. When she filed her Amended Schedule C, she contends, the deadline to object to exemptions was reset and the stipulation no longer applied.

The court disagrees with the debtor. Her original Schedules B and C listed the value of the support claim against her former spouse as "unknown". Docket 1. In Schedule C, the debtor exempted "All" of the claim under Cal. Civ. Proc. Code § 703.140(b)(10)(D).

On April 5, 2011, only 14 days after the March 22, 2011 stipulation with the trustee to extend the deadline for exemption objections, the debtor filed her Amended Schedules B and C. Amended Schedule B changed the value of the support claim from "unknown" to $56,000. Amended Schedule C, while now reflecting the new value of the claim, did not change the exemption the debtor claimed in her original Schedule C. Amended Schedule C still contains an exemption under Cal. Civ. Proc. Code § 703.140(b)(10)(D) as to "All" of the support claim. Docket 31. Amended Schedule C only adds a "wild card" exemption of the claim under Cal. Civ. Proc. Code § 703.140(b)(5) for the amount of $15,285.74.

All four original and amended Schedules B and C describe the support claim identically: "Potential claim against ex husband Peter Hulsebosch. Child/Spousal support order awards 17.2% of his income over $5,529 per month as additional child support, and 14.8% of his gross over $5,.529 [*sic*] as additional spousal support. Debtor does not know whether or not her ex husband earned more than $5,529 during any month or months since this Order was signed in June of 2002."

The March 22, 2011 stipulation for extension of the exemption objection deadline is quite broad. It provides that "the Trustee's deadline to object to exemptions be extended from March 24, 2011, through and including 60 days after the Trustee obtains a recovery from the Debtor's former husband on the Support [claim] Asset." Dockets 29 & 30. The stipulation does not limit the deadline extension to exemptions claimed by the debtor in her original Schedule C. It does not even apply the deadline only to exemption of the support claim. The stipulation refers to the trustee's deadline "to object to exemptions," implying all exemptions claimed by the debtor.

From the debtor's perspective, the stipulation was poorly drafted because while the debtor keeps reading limitations into the stipulation, namely, that it applies only to exemptions in the original Schedule C and it applies only to the exemption of the support claim, the language of the stipulation is far broader.

The broadness of the stipulation language is bolstered also by the fact that the deadline under the stipulation is tied to an act that is far in the future - at least much further than the 30-day deadlines of Rule 4003(b)(1) - and is conditioned on the trustee - not the debtor - performing that act, namely, "60 days after the Trustee obtains a recovery from the Debtor's former husband on the Support Asset." Docket 29 at 2.

It is obvious from this language that when the debtor was executing the stipulation, she could not have reasonably expected the deadline under the stipulation to be overridden by the mere filing of Amended Schedule C with another exemption.

The court rejects the debtor's contention that the stipulation does not apply

to the debtor's exemptions in Amended Schedule C.

This conclusion is also supported by the fact that the Amended Schedule C did not change the "All" amount or value of the exemption asserted in the original Schedule C. In Amended Schedule C, the debtor is still asserting an exemption as to "All" of the support claim, except that now the debtor has added a duplicative wild card exemption under Cal. Civ. Proc. Code § 703.140(b)(5) for $15,285.74. And, the exemption of "All" of the support claim in the Amended Schedule C is identical to the exemption of "All" of the claim in the original Schedule C - they are both asserted under Cal. Civ. Proc. Code § 703.140(b)(10)(D).

In other words, the filing of the Amended Schedule C did not change the amount the debtor was seeking to claim as exempt and the court will not permit the debtor to circumvent the deadline extension she agreed to by simply restating her exemption amount from the original Schedule C in an Amended Schedule C.

Further, it is evident that the debtor was attempting to circumvent the deadline under the stipulation from the fact that she filed her Amended Schedule C only 14 days after executing the stipulation. Dockets 29 & 31.

On one hand, the debtor signed a stipulation that anchors the new exemption objection deadline to 60 days after "the [t]rustee obtains a recovery" on the support claim. Yet, on the other hand, the debtor wants a new, mere 30-day exemption objection deadline triggered by filing an Amended Schedule C 14 days after executing and filing the stipulation. It appears the debtor began having a "buyer's remorse" almost immediately after executing the stipulation with the trustee.

Next, the court rejects the debtor's complaints about the trustee's delay in administrating the support claim. There may have been a delay by the trustee in collecting on the support claim. Nevertheless, as mentioned above, the debtor herself agreed that the new exemption objection deadline would be tied to an act that is far in the future and is conditioned on the trustee performing that act, namely, "60 days after the Trustee obtains a recovery from the Debtor's former husband." Docket 29 at 2. No one forced the debtor to enter into such a broad stipulation with the trustee.

Moreover, the debtor has had plenty of time and opportunity to move for relief that would force the trustee to administer the support claim more promptly. She has been represented by counsel throughout these proceedings. The debtor has not applied for such relief in the past and now that the trustee is attempting to collect on the claim and the debtor's former spouse is attempting to evade such collection by settling the support claim solely with the debtor, outside the realm of bankruptcy court jurisdiction, the debtor has decided to file this motion.

The court is not persuaded that the debtor has been prejudiced by any delay in the administration of the support claim. The debtor received her bankruptcy discharge on February 28, 2011 and she is actually arguing now that "[t]here is no 'potential claim' for the [t]rustee to administer" because the state court apparently entered an order terminating her former spouse's child and spousal support and stating that "there are no arrearages in child support or spousal support. Docket 103 at 2; Docket 104, Ex. H at 2. While the court does not necessarily agree with this contention, it certainly undercuts the debtor's assertion of prejudice.

Also, assuming the trustee obtains a recovery on the support claim, the debtor's interest in the claim is protected by the exemptions she has asserted, subject to a successful objection by the trustee, filed within the deadline established by the March 22, 2011 stipulation.

Additionally, even if the debtor has been prejudiced by the delay in the administration of the support claim, she has not demonstrated that this is relevant to an inquiry under 11 U.S.C. § 554(b). Under 11 U.S.C. § 554(b), the court must determine whether the asset sought to be abandoned is burdensome or of inconsequential value to the estate.

Here, the trustee has made it clear that she is proceeding with the collection of the support claim. She has retained special counsel who is proceeding to collect the support claim. She has valued the pre-petition past due support aspect of the claim at approximately $78,465. This excludes support that has accrued from the November 10, 2010 petition date until the April 23, 2013 state court order terminating support.

And, even though the debtor has ascribed a value of $56,000 to the support claim in Amended Schedule B, her declaration in support of this motion says that this amount represents only her expectation of prospective support: "as I believed it approximated the combined amounts of child support and spousal support that I would be entitled to receive for the following two years or so, when my youngest child graduated from high school in 2013." Docket 102 at 2. Thus, the debtor's valuation of the support claim disregards past due support, meaning that the two valuations are not necessarily inconsistent.

Finally, although the debtor has asserted an exemption for "All" of the support claim, she has not established by preponderance of the evidence that she is likely to prevail on any objection to the exemption if filed by the trustee.

The debtor's exemption as to "All" of the support claim has been asserted under Cal. Civ. Proc. Code § 703.140(b)(10)(D), which provides that:

"(b) The following exemptions may be elected as provided in subdivision (a) . . . (10) The debtor's right to receive any of the following . . . (D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

Cal. Civ. Proc. Code § 703.140(b)(10)(D) appears to look forward into the debtor's financial condition. Courts that have applied the exemptions of Cal. Civ. Proc. Code § 703.140(b)(10) that involve an analysis of the debtor's "reasonably necessary" support have assessed the debtor's current and anticipated future financial condition, his present age and health, his expected ability to work, etc. See, e.g., In re Patrick, 411 B.R. 659, 669 (Bankr. C.D. Cal. 2008) (applying Cal. Civ. Proc. Code § 703.140(b)(10)(E), which contains the same condition as Cal. Civ. Proc. Code § 703.140(b)(10)(D), and citing to Moffat v. Habberbush (In re Moffat), 119 B.R. 201 (B.A.P. 9th Cir. 1990)).

Arguably, then, Cal. Civ. Proc. Code § 703.140(b)(10)(D) covers only prospective spousal and/or child support claims, meaning that the debtor would not be entitled to an exemption under Cal. Civ. Proc. Code § 703.140(b)(10)(D) for past due support. The statute limits the exemption only to "the debtor's right to receive" support, implying a right only to prospective support. On its face, the statute does not seem to contemplate past due support claims. As the court has received no briefing on this issue, however, it makes no

determination on this point.

More, the debtor's declaration in support of the motion - the only admissible evidence from the debtor - says merely that she does "not believe there [to be] any value to the estate in the 'potential claim' listed in [her] Schedules" because "[a]ny such claim was for reasonable and necessary support for myself and my children, and was fully exempted." Docket 102 at 3.

The debtor's statements in support of the basis for her exemption under Cal. Civ. Proc. Code § 703.140(b)(10)(D) are not statements of fact. They are mere legal conclusions tracking the language of the statute, namely, that the support was "reasonably necessary for the support of the debtor and [her] dependent[s]." The debtor's declaration does not say what she needed support for, how much support she needed, how she was affected by not receiving the support, and what she did to cover the financial gap not covered by the support. Docket 102.

Moreover, even assuming that past due support is covered by Cal. Civ. Proc. Code § 703.140(b)(10)(D) and that the debtor may have needed the support - as of the petition date - as reasonable and necessary support under the statute, the exemption would still be unresolved. The court has received no evidence from the debtor about her financial condition and expected financial condition as of the petition date.

Rights to exemptions of property are determined as of the date the petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); Gaughan v. Smith (In re Smith), 342 B.R. 801, 806 (B.A.P. 9th Cir. 2006).

The debtor filed for bankruptcy on November 10, 2010. There is no evidence, as of that date, of the debtor's present and anticipated living expenses, income, health, care of dependents, education, skills, training, and any other special needs. As the court has no evidence on these issues, it will not speculate about the merits of the debtor's exemption.

The foregoing shows that the debtor is far from establishing that the support claim is of inconsequential value to the estate. The debtor has not met her burden of persuasion that the support claim is burdensome or of inconsequential value to the estate. Accordingly, this motion will be denied.

3. 14-26313-A-7 BOMPOSEH STUART — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJW-1
NAGI GIRGIS VS. — 7-14-14 [13]

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, Nagi Girgis, seeks relief from the automatic stay as to real property in Vallejo, California. The movant is the lessor and apparently the owner of the property. The debtor leased the property from the movant. The debtor defaulted under the lease agreement in April 2014. On May 7, 2014, the movant filed an unlawful detainer complaint in state court against the debtor. On May 22, 2014, the debtor answered the unlawful detainer complaint. The debtor filed the instant case on June 16, 2014. The movant seeks relief from stay to continue with the prosecution of the unlawful detainer action to obtain possession of the property.

This is a liquidation proceeding and the debtor has no ownership interest in the property. See Schedule A. 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 several months pre-petition, including April and May 2014. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go to state court in order for that court to determine who is entitled to possession of the property.

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

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

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

4. 14-24017-A-7 KENNETH/JOANN ASBURY — MOTION TO COMPEL ABANDONMENT
PLC-1 — 7-2-14 [20]

Tentative Ruling: The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Elk Grove, California (9318 Lancashire Court). The debtors claim that the value of the property is $430,000, based on the expert testimony contained in the supporting declaration of David Pereira.

The trustee opposes the motion, contending that the property has value to the estate and that he desires to list and attempt to sell the property. He proposes to list the property for sale at $508,000.

In their reply, the debtors have challenged the evidence of value proffered by the trustee.

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

This motion is not about the exact value of the property. The issue is whether the property has value to the estate. The court is not satisfied with the trustee's evidence of value of the property to the estate, given that the debtors' evidence of value takes into consideration substantial repairs or renovations needed at the property due to its age, while the declaration of the trustee's realtor (Docket 32) does not say that she has taken into account the

needed repairs or renovations.

The trustee's realtor says that she wants to list the property for sale at $508,000, even though her declaration does not say anything about the need for repairs or replacement of the roof, flooring, bathrooms, fireplace siding, deck, fence, A/C compressor, and garage door. Docket 24, Ex. D at 3; Docket 32. Given this, the court will adopt the debtors' value at $430,000.

The property is encumbered by two mortgages totaling approximately $332,553, consisting of a mortgage for $209,896 in favor of Green Tree Servicing and a mortgage for $122,657 in favor of Specialized Loan Servicing. In addition, the property is subject to an exemption claim of $100,000, leaving no equity for the estate.

Given the $430,000 value of the property, the encumbrances against the property, and the debtors' exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

5. 11-45927-A-7 RICHARD/TERESA KOOI — MOTION FOR TIME TO ENGAGE ATTORNEY 6-9-14 [105]

Tentative Ruling: The motion will be denied.

Creditor Clarence Kooi, individually and as trustee of the Kooi 1996 Trust for Claire-Marie Kooi and the Kooi 1996 Trust for Lynda Content Kooi, asks the court for time so he can retain the services of an attorney. This motion comes after several attempts by Clarence Kooi to force the trustee to pursue what Clarence Kooi considers assets of the estate, including the debtors' pre-petition entitlement to and/or receipt of proceeds from the sale of homes.

In addition, the debtor appears to be seeking the court to add a real property identified as 7407 Deltawind Drive Sacramento, California to item 10 of the Statement of Financial Affairs.

The motion will be denied as unnecessary because the movant does not need permission or the grant of time from this court to retain counsel. The movant's last objection to the trustee's final report, heard on June 2, 2014, was overruled. Dockets 99 & 102. There are no pending matters before the court in whichi the movant needs the court's permission or leave to do anything, including retain an attorney. To the extent the movant may eventually decide to seek further relief from this court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the court's Local Bankruptcy Rules would continue to govern the movant's entitlement to such relief.

Finally, the court will deny the movant's request for amendment of item 10 of the Statement of Financial Affairs, to add a real property identified as 7407 Deltawind Drive Sacramento, California. Fed. R. Bankr. P. 1009(a) provides: "On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court."

Item 10a of the Statement of Financial Affairs directs the debtor to:

"List all other property, other than property transferred in the ordinary

course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)."

Item 10b of the Statement of Financial Affairs directs the debtor to:

"List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary."

The movant claims that 7407 Deltawind Drive belongs in item 10 of the Statement of Financial Affairs because Debtor Richard Kooi, along with Michael Gorenberg, owned that property as of May 2, 2011 in his individual capacity. This case was filed on October 31, 2011.

The only evidence submitted by the movant to support his claim is three pages of a February 3, 2011 purchase agreement pertaining to the property. The movant claims that Debtor Richard Kooi signed the agreement as part owner of the property on page 11 of 21.

All three pages are illegible and difficult to read. While the second of the three pages submitted by the movant (page 7 of 21) states that "buyers are aware that listing agent is part owner of 7404 Deltawind Dr," the court cannot confirm that Debtor Richard Kooi's signature is anywhere on that page. The same is true as to the other two pages of the agreement. The court does not see Richard Kooi's name on page 11 of 21, which the movant claims is where Richard Kooi signed the agreement in his individual capacity. There is a signature on that page under "Real Estate Broker (Listing Firm)," but the court cannot be certain that this is Richard Kooi's signature, let alone his signature attesting to his part-ownership of the property in his individual capacity.

In any event, the debtors should review the evidence submitted by the movant and, if Richard Kooi indeed erroneously omitted this property from item 10 of the Statement of Financial Affairs, the statement should be amended to correct this omission.

But, based on the illegible, difficult to read, and unauthenticated evidence submitted by the movant, the court is not prepared to order the Statement of Financial Affairs amended in accordance with the movant's wishes. This motion will be denied.

6. 11-21932-A-7 CYRISHJADE DISCIPULO — MOTION TO AVOID JUDICIAL LIEN
TJW-5
VS. MAGDALENA CASUGA — 5-19-14 [40]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from June 2 to June 30 and then to this calendar, in order for the debtor to submit further evidence about the names the debtor had used in the past and specifically with respect to the litigation underlying this motion. The debtor filed an "additional" declaration on July 8, 2014. An amended ruling from June 30 follows below.

A judgment was entered against the debtor (a.k.a. as Karen Galzote) in favor of Magdalena Casuga for the sum of $19,472 on September 14, 2009. The abstract of judgment was recorded with Solano County on January 21, 2010. That lien attached to the debtor's residential real property in Vallejo, California.

The debtor is on the title of the property but not on the loan secured by the property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $360,000 as of the date of the petition. The unavoidable liens total at least $415,000 on that same date. According to the debtor's Schedule A and the debtor's supporting declaration to this motion, the "mortgage debt" on the property was at least $415,000 as of the petition date. See Schedule A; see also Docket 42 at 2. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 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).

7. 11-42033-A-7 STEVEN REED — MOTION TO AVOID JUDICIAL LIEN
CLH-1
VS. DAVID MOXLEY — 7-1-14 [30]

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

The motion will be granted.

A judgment was entered against the debtor in favor of David Moxley for the sum of $8,170 on June 4, 2010. The abstract of judgment was recorded with San Joaquin County on July 9, 2010. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $120,000 as of the date of the petition. The unavoidable liens total $254,079 on that same date, consisting of a first mortgage for $126,957 in favor of Bank of America and a second mortgage for $127,122 in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) & (5) in the amount of $1.00 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).

8. 11-42033-A-7 STEVEN REED — MOTION TO AVOID JUDICIAL LIEN
CLH-2 — 7-1-14 [35]
VS. CROP PRODUCTION SERVICES, INC.

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

The motion will be granted.

A judgment was entered against the debtor in favor of Crop Production Services, Inc. for the sum of $7,628.42 on August 5, 2010. The abstract of judgment was recorded with San Joaquin County on October 5, 2010. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $120,000 as of the date of the petition. The unavoidable liens total $254,079 on that same date, consisting of a first mortgage for $126,957 in favor of Bank of America and a second mortgage for $127,122 in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) & (5) in the amount of $1.00 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).

9. 12-29633-A-7 GERALD HALLIGAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 7-11-14 [63]
BAYVIEW LOAN SERVICING, LLC 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 in part and dismissed as moot in part.

The movant, Bayview Loan Servicing, seeks relief from the automatic stay as to a real property in Roseville, California.

Given the entry of the debtor's discharge on August 21, 2012, 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 $155,000 and it is encumbered by claims totaling approximately $355,990. The movant's deed is in first priority position and secures a claim of approximately $261,224.

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.

10. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION FOR RELIEF FROM AUTOMATIC STAY
FAR-4 — 6-16-14 [24]
FARMERS INSURANCE EXCHANGE VS.

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from June 30, 2014 to give time to the debtors to file opposition to the motion. Their opposition was due no later than July 14, 2014. The debtors have filed no response to the motion. Accordingly, the ruling from June 30 follows below, with one amendment - permitting the movant solely to liquidate its breach of contract claim against the debtors.

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

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

There are twelve (12) non-exclusive factors a bankruptcy court may weigh in determining whether to lift the automatic stay to permit pending litigation to continue in another forum: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the cause of action involves the debtor as a fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) whether the debtor has insurance for its defense and possible liability; (6) whether the action essentially involves third parties; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) whether the judgment claim would be subject to equitable subordination; (9) whether a movant's success would result in a judicial lien avoidable by the debtor; (10) judicial economy; (11) whether the action has progressed to the point where the parties are prepared for trial; and (12) the impact of the stay on the parties and the "balance of hurt." In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984); see also Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990) (cause may exist for lifting the stay, "[w]here a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues.").

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

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

Tucson Estates at 1166-67.

On June 13, 2014, the movant timely filed three nondischargeability claims against Debtor Larry McCarren pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and

(a)(6) and arising from the transactions and events alleged in the district court litigation. Adv. Proc. No. 14-2164.

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

The court will modify the automatic stay to permit the lawsuit to continue with respect to the above-enumerated claims.

The court will permit the movant to litigate the breach of contract claim solely for the purpose of liquidating that claim and incorporating its amount in the movant's proof of claim.

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

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

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

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

The court reminds counsel for the movant not to lodge orders prior to the hearing on the motion.

11. 12-21845-A-7 JULIE KUROKI
SLC-2

MOTION TO APPROVE COMPROMISE
7-3-14 [30]

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 on one hand and Barbara Sutton and the Estate of Darrell Sutton, deceased, on the other hand, resolving the bankruptcy estate's interest in a pre-petition personal injury claim against the Suttons that resulted from an accident that took place in March 2010.

Under the terms of the compromise, the Suttons will pay $5,000 to the estate in full satisfaction of the personal injury claim. The trustee has been unable to gain the debtor's cooperation in the prosecution of the claim. The claim had not been disclosed by the debtor and the bankruptcy case was reopened when it was discovered.

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 or even communication with the trustee and the special counsel charged with prosecution of the claim 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.

12. 12-21845-A-7 JULIE KUROKI — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
SLC-3 — 7-3-14 [35]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee on behalf of special counsel for the estate, 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.

Robert Barnett, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,666 in fees and $1,426.51 in expenses, for a total of $3,092.51. The compensation relates solely to services provided in a personal injury litigation brought by the debtor post-petition, but not disclosed in her Schedules. The services were provided between approximately August 2010 and the present. The requested compensation is based on a one-third contingency fee basis. The movant's employment as special counsel for the estate was approved by the court on October 14, 2013. Dockets 26 & 28.

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 consisted, without limitation, of: conducting discovery, reviewing documents obtained from discovery, communicating with the trustee, negotiating settlement, and reviewing and finalizing the settlement.

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

13. 14-26949-A-7 JUSTIN/ELAINE NELSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AVN-1 — 7-12-14 [14]
NAN CHEN 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, Nan Chen, seeks relief from the automatic stay as to real property in Elk Grove, California. The movant is the legal owner of the property and the debtors leased it from the movant. The debtors defaulted on their monthly lease payments under the lease agreement in May 2014. The debtors also defaulted on their payment of utilities, required by the lease agreement, in November 2013. The movant served the debtors with a 30-day notice effective July 2, 2014. The debtors filed the instant case on July 2, 2014. The movant seeks relief from stay to exercise rights under state law to obtain possession of the property.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay rent and utilities required by the lease agreement. 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 movant to file and prosecute in state court an unlawful detainer action against the debtors 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 debtors. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

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

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

14. 14-25865-A-7 ANA ARGUETA — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 7-3-14 [13]
U.S. BANK TRUST, 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, U.S. Bank Trust, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of $155,331 and it is encumbered by claims totaling approximately $334,323. 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 July 1, 2014.

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.

15. 14-25675-A-7 MARJORIE LOPEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
HSM-1 — 7-8-14 [12]
EL DORADO SAVINGS BANK VS.

Tentative Ruling: The motion will be denied.

The movant, El Dorado Savings Bank, seeks relief from the automatic stay as to a real property in Garden Valley, California (5252 Aksarben Way). The movant seeks relief as to its senior mortgage on the property.

The debtor is not the borrower under the movant's mortgage on the property. The movant's note and deed of trust were executed by Pablo Lopez, who is now deceased. In March 2006, when Mr. Lopez executed the movant's note and deed of trust, the debtor owned no interest in the property. The debtor acquired interest in the property in 2007 or 2008, after or about the time Mr. Lopez and the debtor were married. But, the debtor quitclaimed her interest in the property back to Mr. Lopez in 2009, when they were divorced.

The debtor filed this case on May 29, 2014.

While the debtor does not own any interest in the property, she disclosed the subject property in her schedules because she is the borrower under a note secured by a junior deed on the property. Apparently, she obtained the junior mortgage on the property while she held ownership interest in the property. The holder of that junior mortgage is listed in Schedule D as Green Tree Servicing. See also Schedule A.

Not only does the debtor not owe any debt to the movant, she does not own any interest in the subject property. The court fails to understand how or why 11 U.S.C. § 362(a) is implicated. The motion does not establish that there is an

automatic stay in this case preventing the movant from exercising its remedies under the note and senior deed of trust on the property.

In other words, the movant's own assertions in the motion establish that the "case or controversy" requirement is not satisfied.

"A 'bedrock requirement' for federal jurisdiction is the existence of a 'case' or 'controversy.' Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 . . . (1982). '[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. at 96 . . . (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97. . . ."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001).

The fact that the automatic stay does not affect the subject property and does not prevent the movant from collecting on its debt secured by the property means that there is no justiciable controversy for the court to decide. At best, the motion amounts to a request for an advisory opinion, *i.e.*, how the court would rule if the automatic stay affected the property, which the court is unprepared to make. The motion will be denied.

16. 14-20583-A-7 LARRY JENT — MOTION TO ABANDON
TAA-1 — 7-2-14 [116]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Truckee, California (on Somerset Drive). The property is owned by a revocable family trust, The BHR Trust, of which the debtor is a beneficiary.

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

The debtor marketed the property for sale unsuccessfully for years, prior to the filing of this bankruptcy case, for as low as $4.995 million. Docket 53 at 2. Yet, the property is subject to over $8 million in encumbrances, including outstanding property taxes, a $4.368 million mortgage held by Northern Trust Company, and a $4 million lien in favor of an entity related to the debtor, Blackhorse Ranch 1, LLC.

Further, the trustee's visit to the property on June 17, 2014 revealed that someone stripped the property from nearly all fixtures that would be typically included in the sale of the property. This has certainly devalued the property even further. And, since Northern Trust Company obtained relief from the automatic stay as to the property on March 10, 2014 (Dockets 53 & 57), it also obtained an order for possession of the property from state court on June 27, 2014.

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

17. 13-34873-A-7 ELIZABETH LITTRELL — MOTION TO APPROVE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A. 6-24-14 [17]
APN-1

Tentative Ruling: None.

FINAL RULINGS BEGIN HERE

18. 14-22706-A-7 DAVID/BARBARA BAXTER — MOTION TO AVOID JUDICIAL LIEN
NBC-2
VS. PACIFIC SERVICE CREDIT UNION — 6-2-14 [19]

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 Pacific Service Credit Union for the sum of $15,289.83 on December 26, 2013. The abstract of judgment was recorded with Tehama County on January 16, 2014. That lien attached to the debtor's residential real property in Red Bluff, 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 $100,000 as of the date of the petition. The unavoidable liens total $100,949 on that same date, consisting of a mortgage for $19,988 in favor of Wells Fargo Bank and a mortgage for $80,961 in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 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).

19. 13-35811-A-7 RICHARD WILLIAMS — MOTION FOR RELIEF FROM AUTOMATIC STAY
CCC-1
WELLS FARGO BANK, N.A. VS. — 6-30-14 [49]

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 a real

property in Oroville, California.

Given the entry of the debtor's discharge on April 4, 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 $150,000 and it is encumbered by claims totaling approximately $175,533. 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 January 22, 2014. And, the trustee has filed a non-opposition to this motion.

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.

20. 14-21612-A-7 OLLIE LEFTRIDGE
PPR-1
CITIBANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-16-14 [23]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on July 7, 2014, dissolving the automatic stay. See 11 U.S.C. § 362(c)(2)(B). And, the motion does not seek retroactive relief from stay or relief under 11 U.S.C. § 362(d)(4).

21. 11-44616-A-7 LOYD/VERNA HOSTETTER
DNL-4

MOTION FOR
MONEY JUDGMENT
6-30-14 [74]

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

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

The motion will be granted.

The trustee asks the court for a money judgment for $34,452 based on this court granting the trustee's motion for turnover, DCN DNL-2. 11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case."

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

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

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

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

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

The court's January 27, 2014 ruling granting the trustee's turnover motion is incorporated here by reference. Docket 56. The order granting that motion was entered on February 3, 2014. Docket 60. The order directed the debtors to turn over to the trustee $34,452, representing post-petition rent proceeds collected by the debtors through January 2014. Docket 60 at 2. The debtors have not turned over to the trustee any of the proceeds, asserting that they are no longer in possession of the proceeds. According to the trustee, the debtors have claimed that some of the proceeds were spent on repairs of the property.

Given the debtor's failure to turn over the funds to the trustee, the court will enter a money judgment in favor of the trustee for $34,452.

The granting of this motion is without prejudice to the debtors timely filing a motion for an administrative expense claim for any amounts spent on repairs of the property. This motion will be granted.

22. 14-25517-A-7 ANDREW/LINDA POE
PPR-1
CALIFORNIA HOUSING FINANCE AGENCY VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-18-14 [13]

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, California Housing Finance Agency, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $190,000 and it is encumbered by claims totaling approximately $331,405. The movant's deed is the only mortgage against the property. Schedule D also discloses a mechanics lien in favor of NCO Financial Services for $6,107 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 July 1, 2014.

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.

23. 13-33618-A-7 CAROLE BAIRD
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-20-14 [132]

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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2012 Chevrolet Silverado 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 October 22, 2013 as a chapter 13 proceeding. The case was converted to chapter 7 on November 5, 2013 and a meeting of creditors was first convened on December 4, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 4. The debtor filed a statement of intention on November 5, 2013, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle. Docket 17.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so within the prescribed 30-day period. And, no reaffirmation agreement or motion to redeem has been filed otherwise, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on January 3, 2014, 30 days after the initial meeting of creditors.

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 January 3, 2014.

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

24. 10-44626-A-7 DENISE/JOSEPH CAUDLE — MOTION TO AVOID JUDICIAL LIEN
MG-6
VS. DISCOVER BANK — 6-18-14 [69]

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

The motion will be granted.

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $125,235 as of the date of the petition. The unavoidable liens total $137,764 on that same date, consisting of a single mortgage in favor of First Horizon Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Second Amended Schedule C. Docket 59.

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. 10-44626-A-7 DENISE/JOSEPH CAUDLE
MG-7
VS. KELKRIS ASSOCIATES, INC.

MOTION TO
AVOID JUDICIAL LIEN
6-18-14 [75]

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

The 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 $125,235 as of the date of the petition. The unavoidable liens total $137,764 on that same date, consisting of a single mortgage in favor of First Horizon Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Second Amended Schedule C. Docket 59.

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. 14-23227-A-7 GREGORY ZUCCARO
FF-2
VS. BANK OF THE WEST

MOTION TO
AVOID JUDICIAL LIEN
7-1-14 [19]

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

The proof of service accompanying the motion indicates that the notice served by certified mail was not addressed to an officer of the creditor. Docket 23 at 2. It was not addressed to anyone. This does not satisfy Rule 7004(h).

27. 14-21730-A-7 TAMMY FIGUERA

MOTION TO
ENFORCE 30 DAY STAY AND TO RECIND
UNLAWFUL EVICTION
3-5-14 [15]

Final Ruling: The court finds that a hearing will not be helpful to its

consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted in part and denied in part.

The hearing on this motion was continued from June 16, 2014 to allow Mr. Brar to respond to evidence submitted by the debtor. Mr. Brar has not responded to that evidence in accordance with the court's June 16, 2014 tentative ruling.

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

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

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

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

. . .

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

11 U.S.C. § 362(l) provides that:

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

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

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

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

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

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

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

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

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

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

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

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

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

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

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

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

(D) The clerk of the court shall arrange for the prompt transmittal of the rent

deposited in accordance with paragraph (1)(B) to the lessor."

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

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

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

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

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

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

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

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

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

would have been extinguished in a foreclosure by an earlier in time mortgage.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsections 702(a)(1) and (a)(2)(B) do not apply because Mr. Brar did not

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

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

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

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

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

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

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

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

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

11 U.S.C. § 362(a) provides that "Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

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

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

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

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

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

In Perl - a case quite similar to the facts here - the court rejected the argument that a debtor-tenant has no legal or equitable interest in rented property once a judgment for possession has been entered in favor of the landlord. Perl at *7-8. "We conclude that . . . [the debtor's] physical occupation of the Residence conferred a possessory interest under California law that was protected by the automatic stay." Perl at *9.

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

The applicability of the automatic stay is even more apparent under section 362(a)(1) and (2) because "property of the estate" is not implicated under

those subsections. Rather, section 362(a)(1) and (2) protects actions taken "against the debtor" only.

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

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

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

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

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

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

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 582 (1996) (holding that "we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual and potential damages to the punitive award," citing to TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 458 (1993)); State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003) (noting that a single-digit ratio between punitive and compensatory damages will satisfy due process).

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

- was continuing the unlawful detainer action or proceeding commenced pre-

petition against the debtor,

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

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

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

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

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

And, a good faith belief that 11 U.S.C. § 362(b)(22) applied is not material. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996). A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Id.

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

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

"The court will continue the hearing on the motion to June 16, 2014 at 10:00 a.m. The debtor shall file and serve evidence of damages resulting from the violation of the automatic stay no later than June 2, 2014. The debtor shall also file with the court no later than June 2, 2014 a certificate of service demonstrating that her evidence was served by U.S. Mail on Mr. Brar's attorney. The evidence from the debtor shall include but not be limited to declaration(s) executed under the penalty of perjury. Any reply from Mr. Brar shall be filed and served no later than June 9, 2014. Mr. Brar shall also file no later than June 9, 2014 a certificate of service evidencing that the reply was served by U.S. Mail on the debtor."

Docket 59 at 5.

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

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

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

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

- attorney's fees and costs,

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

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

Docket 61 at 5-6.

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

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

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

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

Entry of the judgment for possession did not violate the stay. It was only when Mr. Brar decided to enforce the writ of possession against the debtor as an unnamed occupant of the property - post-petition - that he violated the stay.

Third, the court will deny the request for "reforming the grant deed in favor of debtor's name . . . and quieting title in debtor's name." This is a motion for violation of the automatic stay. Granting any other relief goes well-

beyond the relief requested in the motion. Also, the reformation of a deed and the quieting of title require an adversary proceeding. See Fed. R. Bankr. P. 7001(2). Additionally, as mentioned above, this case was dismissed on April 28, 2014, meaning that this court no longer has jurisdiction over any causes of action pertaining to the debtor.

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

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

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

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

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

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

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

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

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

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

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

- four pages from a Citibank account statement covering the period of April 23,

2014 through May 22, 2014, listing numerous debits and deposits;

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

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

Docket 61.

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

For instance, the court is uncertain why a veterinary clinic bill should be considered as damages caused by the violation of the automatic stay. Nor does the motion explain why the court should award damages to the debtor based on the lease of an apartment by Patrick Fagundes and the debtor, when there was no stay violation as to the eviction of Mr. Fagundes. Mr. Fagundes is the debtor's husband. The debtor does not say whether and to what extent she has been actually paying rent for the apartment. The fact that the debtor was paying Patrick Fagundes rent for her to live at the Rocklin property begs the question of whether and how much she is paying for the apartment the two of them are supposedly renting.

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

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

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

Finally, because the debtor has not given the court evidence of the reasonable value of her use and possession of the Rocklin property, the court would have been inclined to consider her cost of replacement housing. However, the only evidence of replacement housing cost is the March 28 lease of an apartment with Patrick Fagundes. As mentioned above, such evidence is inadmissible. It is not authenticated and it is hearsay. See Fed. R. Evid. 802 & 901(a). There is no declaration curing these defects in the evidence.

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

Sixth, the $50,000 in non-economic damages will be denied for the same reason the court is denying the $1.825 million in economic damages. The debtor does not explain how or why she has sustained $50,000 in non-economic damages. She states that she has suffered "[u]pset, emotional distress, nausea, vomiting,

headaches, stomach pain lasting to the present . . ., grief, humiliation, mortification,[] loss of consortium with her spouse,[] nightmares, cold sweats, dizziness,[] depression and similar symptoms continuing."

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

Moreover, assuming the debtor has indeed had the above symptoms, there is no evidence, such as a medical opinion, establishing that the debtor's symptoms were caused by the March 4 eviction.

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

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

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

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

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

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

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

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

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

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

Seventh, the request for $250,000 in punitive damages will be denied. In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Provident Life & Acc. Ins. Co. v. O'Connor, Case No. 00-55657, WL 460287, at *

3 (9th Cir. Feb. 13, 2002); Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984).

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

After the June 16 hearing on the motion, the court took this matter under advisement to review additional documents filed by the debtor on June 13, just three days before the hearing on the motion. Docket 66. The court has reviewed the additional documents from the debtor. The court will deny the debtor's request for compensatory damages for the items she left at the real property upon her eviction because her bankruptcy schedules, specfically, Schedule B, lists none of the property identified in the June 13 filing. The list of items "not returned due to eviction" include, without limitation, a laptop, clothing, cookware, a coffee pot, electronics, a couch, other furniture, etc. Docket 66 at 9. Yet, the debtor's Schedule B lists none of the personal property items as to which the debtor is now seeking compensation. The only personal property listed in Schedule B is personal jewelry. The debtor is not seeking compensation for jewelry due to the eviction.

The court will also deny the request for compensatory damages based on the debtor's claim that she suffered depression due to the eviction. The only evidence of this is an unexecuted summary report of a June 6, 2014 visit by the debtor to Placer County Medical Clinic. The report states that the debtor is suffering from depression. However, the report does not reflect the cause of the debtor's depression and, specifically, does not state that the eviction was the cause of the debtor's depression.

More importantly, as noted much earlier in this ruling, the debtor's damages are limited to the period of March 4 through April 28, 2014, given that the debtor's case was dismissed on April 28. But, the exam reflected by the medical report indicates that it is based on a June 6, 2014 diagnosis of the debtor. The report then does not help the court in finding that the debtor suffered depression during the relevant period of March 4 through April 28.

Because the debtor has not given the court evidence of what was the reasonable value of her use and possession of the Rocklin property, the court is inclined to award the debtor her cost of replacement housing. The base monthly rent for the lease is $950. Given that the debtor and Mr. Fagundes are both renting the apartment, her portion of the lease payment would be 50% or $475 a month.

This division of the rent between the debtor and Mr. Fagundes is consistent with their division and sharing of expenses at the Rocklin property, where the debtor was actually paying rent to Mr. Fagundes and was paying some of the household expenses, in exchange for her right to use and possess the Rocklin property.

As the debtor entered into the lease on March 28 and her case was dismissed on April 28, one month later, the court is inclined to award the debtor $475 in replacement housing costs, in addition to the punitive damages already awarded. After the case was dismissed on April 28, the writ of possession became enforceable against the debtor, meaning that there could not have been a violation of the stay in enforcing the writ after that date.

The court will deny compensatory damages for the debtor's payment of $375 as security deposit in connection with the apartment lease agreement. Such security deposit should be eventually returned to the debtor, provided she abides to the rules of the lease and there are no defaults by the debtor as prescribed by the lease agreement. Docket 66 at 11.

The court will award $3,475 in total damages to the debtor ($3,000 in punitive damages plus $475 in compensatory damages). Such damages shall be paid by Mr. Brar to the debtor no less than seven days after entry of the order on this motion. Mr. Brar shall pay the damages to the debtor by cashier or personal check, made payable to the debtor, to be sent to the address the debtor provided Mr. Brar at the June 16 hearing on this motion.

28. 14-24134-A-7 JAMES/JENIFER LUCE — MOTION TO COMPEL ABANDONMENT
GJS-1 — 6-25-14 [14]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Roseville, California. The entire equity in the property is exempt.

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

The debtors have scheduled the value of the property at $220,000. Docket 12. The debtors own only one-half interest in the property. The property is encumbered by a single mortgage in favor of North America Title Co. in the amount of $145,000. This leaves $75,000 of equity in the property, one half of which or $37,500 belongs to the debtors. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730. Docket 12.

Given the scheduled value of and encumbrances against the property and the debtors' exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

29. 14-20040-A-7 JOSE/GUILLERMINA ORTIZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 6-13-14 [21]
WELLS FARGO BANK, N.A. VS.

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

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

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

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

Given the entry of the debtor's discharge on July 15, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The trustee filed a report of no distribution on February 12, 2014. This is cause for the granting of relief from stay as to the estate.

Thus, the motion will be granted as to 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.

The property has a value of $158,326 and it is encumbered by claims totaling approximately $146,266. The movant's deed is the only encumbrance against the property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.	09-27252-A-7 SLC-12	SIERRA PACIFIC MOBILE HOME SERVICES, INC.	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 6-27-14 [89]

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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,401.10 in fees and $0.00 in expenses. This motion covers the period from March 12, 2010 through March 31, 2014. The court approved the movant's employment as the estate's accountant on March 21, 2010. In performing its services, the movant charged hourly rates of $90, $175, $180, $190, $195, $240, $275, $300 and $325.

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 preparing W-2s for former employees of the debtor, preparing payroll tax returns, and preparing income tax returns.

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

31. 11-42862-A-7 ROBERT/NANCY MEES — MOTION FOR
PPR-1 — RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 6-16-14 [20]

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, U.S. Bank, seeks relief from the automatic stay as to a real property in Jackson, California.

Given the entry of the debtor's discharge on January 9, 2012, 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 $225,000 and it is encumbered by claims totaling approximately $619,770. 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 November 2, 2011. The trustee has also filed a non-opposition to this motion.

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.

32. 11-34464-A-7 STUART SMITS
MHK-2
ELIAS BARDIS VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-11-14 [280]

Final Ruling: The hearing on this motion has been continued to August 25, 2014 at 10:00 a.m. Dockets 288 & 290.

33. 14-23174-A-7 JOHN/GUADALUPE WILLIAMS
PD-1
PNC BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-13-14 [13]

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, PNC Bank, seeks relief from the automatic stay as to a real property in Lodi, California.

Given the entry of the debtor's discharge on July 8, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $167,822 and it is encumbered by claims totaling approximately $244,207. The movant's deed is in second priority position and secures a claim of approximately $40,207.

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.

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.

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

Final Ruling: This motion has been resolved by stipulation. Dockets 23 & 25.

35. 14-20399-A-7 ROBIN/TRAVIS PARKER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
BLL-3 — 6-30-14 [60]

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

Byron Lynch, attorney for the trustee, has filed his first and final motion for approval of compensation. The requested compensation consists of $3,115 in fees and $112.75 in expenses, for a total of $3,227.75. This motion covers the period from February 13, 2014 through the present. The court approved the movant's employment as the trustee's attorney on February 20, 2014. In performing his services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the trustee in the sale of a real property, (2) preparing and prosecuting a motion to sell and obtaining an order approving the sale, (3) advising the trustee about the general administration of the estate, and (4) 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.

36. 14-21899-A-7 KRISTEN CHOONHAURAI
PD-1
ELIZON MASTER PARTICIPATION TRUST I VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-19-14 [18]

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, U.S. Bank Trust, N.A., as trustee of the Elizon Master Participation Trust I, seeks relief from the automatic stay as to a real property in Vacaville, California.

Given the entry of the debtor's discharge on June 13, 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 $318,000 and it is encumbered by claims totaling approximately $409,654. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

37. 14-22899-A-7 JOHN/LINDA GUSTAFSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 6-11-14 [19]
WELLS FARGO BANK, N.A. VS.

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Canby, Oregon.

Given the entry of the debtor's discharge on July 22, 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 $153,970 and it is encumbered by claims totaling approximately $175,625. The movant's deed is in first priority position and secures a claim of approximately $118,219.

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 loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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