UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 3, 2015 at 10:00 a.m.

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

5, 6, 7, 8, 10, 11, 12

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a 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 31, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 17, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 24, 2015. 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. 13-35308-A-7 DOROTHY PARENT — OBJECTION TO CLAIM
DL-1
VS. ROBERT E. SWENDEMAN — 6-10-15 [362]

Tentative Ruling: The objection will be sustained in part.

The debtor objects to the proof of claim, Proof of Claim No. 10, of Robert Swendeman, a claim for $304,688.57, representing largely attorney's fees for the collection on a claim for real estate commissions owed to Robert Swendeman.

Laurence Blunt, as counsel for Robert Swendeman, has filed opposition to this objection.

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The court cannot consider the opposition to the objection as it was filed by Laurence Blunt on behalf of the claimant Robert Swendeman, who passed away on July 14, 2011, even before this bankruptcy case was filed on December 2, 2013 and before the subject proof of claim was filed on April 25, 2014. See Docket 233.

The court is satisfied that the debtor has standing in this objection.

Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, while the debtor in his individual capacity lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004). For instance, is this a surplus estate such that if this claim is disallowed, the debtor would receive a dividend? Are there nondischargeable claims such that disallowance of this claim will increase the dividend to the nondischargeable claims and thereby reduce the debtor's remaining nondischargeable liability?

Here, this appears to be a surplus estate as the main asset, a 50% interest in a real property in Red Bluff, California, has a likely value of over $2 million, while the estate's liabilities are estimated at approximately $1.513 million. Docket 1, Schedules D & F. A December 2013 appraisal of the property valued it at over $6 million. Adv. Proc. No. 15-2057, Docket 6.

The objection will be sustained in part and overruled in part.

Under California law, "(a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

"(1) Its revocation by the principal.

"(2) The death of the principal.

"(3) The incapacity of the principal to contract.

"(b) Notwithstanding subdivision (a), any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest.

"(c) Nothing in this section shall affect the provisions of Section 1216.

"(d) With respect to a proxy given by a person to another person relating to the exercise of voting rights, to the extent the provisions of this section conflict with or contravene any other provisions of the statutes of California pertaining to the proxy, the latter provisions shall prevail."

Cal. Civ. Code § 2356.

When Robert Swendeman passed away on July 14, 2011, the agency he created with Mr. Blunt for the collection of the judgment based on the unpaid real estate commissions, terminated. The court has no evidence that Mr. Blunt owned an interest in the judgment.

Even if the court were to consider the opposition, it is unhelpful to establish surviving authority in Mr. Blunt to continue to collect the judgment in this bankruptcy case. The opposition does not even mention, much less brief Cal. Civ. Code § 2356.

Mr. Blunt contends that he had an agreement with Thomas Turk - as agent for Robert Swendeman - for the collection of the judgment, even though the judgment was held actually by Robert Swendeman and not Mr. Turk.

Mr. Blunt asserts that Mr. Turk did not know of Robert Swendeman's passing until March 11, 2015, when Mr. Blunt told him about it. Mr. Blunt says that he "had just been informed of Robert Swendeman's death" immediately prior to March 11, 2015. Docket 383.

But, even if the court were to accept the above as true, Mr. Turk was never Mr. Blunt's principal. Robert Swendeman was always the principal of Mr. Blunt. It was based on the authority of Robert Swendeman that Mr. Blunt was collecting the judgment.

The fee agreement for the collection of the unpaid commissions judgment identifies Robert Swendeman as the "Client" of Mr. Blunt and not Mr. Turk. Mr. Turk is identified merely "as authorized agent for Robert Swendeman." Docket 364 at 53.

Moreover, Mr. Blunt named Robert Swendeman as the real party in interest in all collection proceedings. Mr. Turk was never named as a party in any of the collection litigation.

And, as evident from Mr. Blunt's motions in this case for substitution of Robert Swendeman with a successor in interest, the interest in the unpaid commission and judgment was inherited by Robert Swendeman's heir(s), not by Mr. Turk.

The court rejects the contention that Mr. Blunt continued to have authority to collect on the judgment after the passing of Robert Swendeman because Mr. Blunt received his agency authority from Mr. Swendeman through Mr. Turk, who was a

real estate agent associated with Robert Swendeman prior to his passing.

Mr. Blunt's obligations as a licensed attorney in California were to Robert Swendeman and not to Mr. Turk. Mr. Blunt's representative authority as agent for Robert Swendeman was not derived or dependent on the asserted agency relationship between Mr. Turk and Robert Swendeman. Mr. Blunt's obligations to Robert Swendeman were not dependent on what Mr. Turk or anyone else knew about Robert Swendeman's passing.

This includes Mr. Blunt's affirmative obligation toward Robert Swendeman to "keep [him] reasonably informed about significant developments relating to the employment or representation." California Rule of Professional Conduct 3-500.

There is no evidence in the record that Mr. Blunt ever followed up with Robert Swendeman about the progress of the collection. Incidentally, the same is true about Mr. Blunt's communications with Mr. Turk. Mr. Blunt's declaration says nothing about him apprising Mr. Turk of the progress of the collection. If Mr. Turk was indeed acting as agent for Robert Swendeman in the employment of Mr. Blunt to collect the judgment, Mr. Blunt should have kept at least Mr. Turk apprised of the collection progress. Yet, Mr. Blunt's declaration says nothing about keeping Robert Swendeman or Mr. Turk "reasonably informed about significant developments relating" to the collection. Docket 383.

Significant developments within the meaning of California Rule of Professional Conduct 3-500 would have included the filing of this bankruptcy case by the debtor, Mr. Blunt's filing of two separate lawsuits (adversary proceedings) in this bankruptcy - expressly naming Robert Swendeman as a plaintiff in those lawsuits, and filing of multiple other motions in this case on behalf of Robert Swendeman.

The instant proof of claim was filed by Mr. Blunt on behalf of Robert Swendeman, while Mr. Swendeman had long passed away. The proof of claim clearly states that the creditor of the proof of claim is "Robert E. Swendeman dba T'N'T' Real Estate," which is a sole proprietorship. The name and address for notices on the proof of claim is identified as "c/o Laurence Blunt Law Office of Laurence C. Blunt 700 Leisure Lane, Sacramento, CA 95815." POC 10. No other persons are mentioned as having interest in the proof of claim. Mr. Turk is not mentioned on the proof of claim form.

Mr. Blunt's authority to represent Robert Swendeman died with Robert Swendeman, on July 14, 2011. Hence, Mr. Blunt had no authority to represent Robert Swendeman in this bankruptcy proceeding, much less to file documents such as the proof of claim on behalf of Robert Swendeman.

Accordingly, the proof of claim will be disallowed.

Nevertheless, there are two mitigating factors in favor of Robert Swendeman's successor in interest to the claim. First, the claim is secured by the estate's 50% interest in the Red Bluff, California real property. As such, the filing of a proof of claim is not a prerequisite to the satisfaction of the claim from the sale of the claim's collateral.

Second, to the extent the claim is unsecured, the proof of claim can be refiled as untimely. Although the claims bar date in this chapter 7 case was April 25, 2014, untimely claims are not disallowed in chapter 7 cases. They are merely accorded a lower priority of distribution. See 11 U.S.C. § 726(a)(3). And, as this appears to be a solvent estate, the claim is likely to be paid in full.

If and when Robert Swendeman's successor in interest is properly substituted in this case, then, the proof of claim can be refiled.

This ruling does not affect the state court judgments and orders upon which the proof of claim is based. The objection will be sustained in part.

2. 13-35308-A-7 DOROTHY PARENT — MOTION FOR SUBSTITUTION OF PARTY
LCB-8 — 4-28-15 [325]

Tentative Ruling: The motion will be denied without prejudice.

The hearing on this motion was continued from June 15, 2015.

Dorothy Swendeman, through her purported agent in fact Cynthia Swendeman, moves for the court to substitute her in the place of Robert Swendeman, her late spouse. Mr. Swendeman passed away on July 14, 2011, over two years prior to the filing of this case. Since the case was filed on December 2, 2013, attorney Laurence Blunt has filed extensive litigation, several appeals, and two adversary proceedings, as counsel for Robert Swendeman.

The motion will be denied. Fed. R. Civ. P. 25(a)(1), as made applicable here by Fed. R. Bankr. P. 7025, provides that:

"**(1) Substitution if the Claim Is Not Extinguished.** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record."

While Rule 25 governs the substitution of deceased parties in federal court, state law controls who is the proper party successor in interest and whether and to what extent a claim is extinguished by the party's passing. In re Baycol Products Litigation, 616 F.3d 778, 788 (8th Cir. 2010); see also Robert v. Wegmann, 436 U.S. 584, 598 (1991).

As argued by the oppositions, the movant has not produced admissible evidence of Cynthia Swendeman's authority to execute a declaration on behalf of Dorothy Swendeman in support of the request for the substitution of Dorothy Swendeman in the place of the deceased Robert Swendeman. This has nothing to do with whether the movant has substantively complied with California's successor in interest requirements. The court does not reach that issue in this ruling. The issue here is that the Federal Rules of Evidence prohibit the admission of hearsay statements as evidence. Fed. R. Evid. 802.

The movant has not even briefed the issue.

Cynthia Swendeman's declaration states that "Dorothy B. Swendeman has authorized me, her daughter, Cynthia E. Swendeman, to execute this declaration on her behalf." Docket 328 at 1. According to Cynthia Swendeman, "Dorothy B. Swendeman did not execute this declaration because she is elderly." Docket 328

at 2. In her declaration, Cynthia Swendeman also purports that she is "acting as attorney in fact for Dorothy B. Swendeman pursuant to a durable power of attorney executed by Dorothy B. Swendeman on March 8, 2013 before a notary public." Docket 328 at 2.

The court does not understand why being "elderly" disqualifies Dorothy Swendeman from executing her own declaration in support of this motion. Being elderly is not a medical condition that automatically incapacitates or disqualifies Dorothy Swendeman from signing her own declaration. Without her declaration, Cynthia Swendeman's statement that "Dorothy B. Swendeman has authorized me, her daughter, Cynthia E. Swendeman, to execute this declaration on her behalf" is inadmissible hearsay. The phrase "has authorized me" refers to an out-of-court statement sought to be admitted for the truth of the matter asserted therein. Fed. R. Evid. 801(a)-(c).

Cynthia Swendeman also claims to be acting on behalf of Dorothy Swendeman based on a durable power of attorney that is not in the record. Thus, the reference to Cynthia Swendeman having such authority from a power of attorney is also hearsay, *i.e.*, an out-of-court statement in the power of attorney, sought to be admitted for the truth of the matter asserted therein. Fed. R. Evid. 801(a)-(c). As such, the court does not have admissible evidence of Cynthia Swendeman's authority to act on behalf of Dorothy Swendeman.

Every power of attorney defines the scope of the authority being granted to the agent. Without reviewing the actual power of attorney upon which Cynthia Swendeman is basing her authority to act for Dorothy Swendeman, the court cannot determine whether Cynthia Swendeman is exercising authority actually granted to her.

Also, while Cynthia Swendeman claims to have personal knowledge of the facts in her declaration, this is based solely on the fact that she is one of the children of Robert and Dorothy Swendeman. This is insufficient foundation of her personal knowledge. Being one of three children of Robert and Dorothy Swendeman does not necessarily mean that Cynthia Swendeman was privy to all of the family's affairs, especially those concerning Mr. Swendeaman's business and his assets. Docket 328; see also Fed. R. Evid. 602 (prescribing that "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter").

Further, even if the court did have a power of attorney from the movant, authorizing Cynthia Swendeman to act on behalf of Dorothy Swendeman, a power of attorney does not permit for Cynthia Swendeman to testify on behalf of Dorothy Swendeman. There is no power of attorney exception to the hearsay rule.

And, even if the court were to grant the requested substitution, this does not cure the defect in Robert Swendeman's proof of claim filed with this court on April 25, 2014. POC 10. As Mr. Swendeman passed away on July 14, 2011, before the bankruptcy case was filed on December 2, 2013. Any authority that Mr. Blunt had to act for Mr. Swendeman ended upon his death. The fact that Mr. Swendeman was deceased at the time of the proof of claim filing means that Mr. Blunt, the now former counsel of Mr. Swendeman, did not have authority to do anything on behalf of Mr. Swedenman.

Thus, even if the court were to substitute Dorothy Swendeman in the place of Robert Swendeman, that will not cure this defect.

Furthermore, the fact that the state court may have granted substitution to the

movant in a state court action against the debtor, based upon this deficient evidence, is not basis for this court to recognize Cynthia Swendeman's authority to act on behalf of Dorothy Swendeman. This court must make its own, separate and independent determination of whether Cynthia Swendeman is qualified to act on behalf of Dorothy Swendeman.

Moreover, the movant's reference to the state court action came with her reply to the oppositions, once again depriving parties in interest from an opportunity to respond to a newly advanced contention. And, all this court has in the record is the state court's tentative ruling on a motion to substitute parties. There is no order from the state court. The court cannot tell from the record what happened at the June 5, 2015 hearing on the motion.

Finally, the contention by the movant that she is seeking substitution only with respect to a proof of claim filed by Robert Swendeman is unacceptable. If the movant is the successor for Robert Swendeman she is his successor as to everything.

After the court issued the above ruling for the June 15, 2015 hearing on the motion, it continued the hearing on the motion to August 3, 2015 in order to give Mr. Blunt additional time to submit further evidence and briefing in support of the motion.

However, even after receiving the additional evidence and briefing in support of the motion, the court continues to have substantial concerns about the motion.

Mr. Blunt has now submitted a declaration from Dorothy Swendeman, stating that she is the successor to Robert Swendeman's interest in the subject litigation and the claim asserted against the estate.

However, the declaration says nothing about her competence, even though the declaration of her daughter, Cynthia Swendeman, which is also part of the record on this motion, raises Dorothy Swendeman's competence as an issue. Cynthia Swendeman calls Dorothy Swendeman "elderly" and asserts that she is represented in this case via a durable power of attorney granted to Cynthia Swendeman. Docket 328 at 2.

More, Dorothy Swendeman's declaration does not conform to the requirements of Cal. Civ. Proc. Code §§ 377.32 and 377.11.

Cal. Civ. Proc. Code § 377.31 provides that, "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest."

Cal. Civ. Proc. Code § 377.32 further provides that, "*(a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following:*

"*(1) The decedent's name.*

"*(2) The date and place of the decedent's death.*

"*(3) 'No proceeding is now pending in California for administration of the*

decedent's estate.'

"*(4) If the decedent's estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest.*

"*(5) Either of the following, as appropriate, with facts in support thereof:*

"*(A) 'The affiant or declarant is the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding.'*

"*(B) 'The affiant or declarant is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding.'*

"*(6) 'No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding.'*

"*(7) 'The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.'*

"*(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.*

"*(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.*"

The "decedent's successor in interest" for purposes of section 377.32(a)(5)(A) is defined by section 377.11 as "the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action."

Dorothy Swendeman's declaration simply states that "I am the decent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decendent's interest in the action or proceeding." Docket 379 ¶ 6.

But, the above statement is a legal conclusion and her declaration is devoid of the facts underlying this legal conclusion.

Fed. R. Evid. 701 prohibits lay persons from rendering legal conclusions. The rule states "*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,*" which permits the testimony of only expert witnesses that have been qualified as such, *i.e.*:

"*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."

Fed. R. Evid. 702.

Dorothy Swendeman has not been qualified as an expert witness, much less a legal expert to state that she meets the definition of section 377.11, and her testimony is not helpful to the trier of fact, namely, the court. Also, it is the court's prerogative to render legal conclusions. Witnesses, such as Dorothy Swendeman, are limited to testifying only as to facts.

The court does not have sufficient evidentiary record to determine whether Dorothy Swendeman meets the definition of "decent's successor in interest" for purposes of section 377.32(a)(5)(A).

Further, Dorothy Swendeman states little or nothing about whether a probate estate of Robert Swendeman was ever administered, how such an estate was administered, was there a will or trust, was there ever a court determination of her rights to succeed Robert Swendeman, and on what basis, if any, Robert Swendeman's claim(s) in this case passed on to Dorothy Swendeman based on operation of law.

Dorothy Swendeman merely states that "[n]o proceeding is *now* pending in California for administration of the decedent's estate." Docket 379 ¶ 8.

However, Robert Swendeman passed away on July 14, 2011, over four years ago. The court then is unconcerned with whether there are any decedent estate administration proceedings *now*. The relevant timing of such proceedings is approximately four years ago.

The requirements of section 377.11 must still be established by evidence that is admissible in this court. Dorothy Swendeman's declaration, however, is short on such evidence.

The foregoing deficiencies are not only important for the substitution this motion is seeking to accomplish. They are important also for the trustee to know who is the real party in interest behind the purported secured claim of Robert Swendeman.

Given the history of this proceeding and Mr. Blunt's actions in this case, this court cannot ignore the above deficiencies. Accordingly, the motion will be denied.

3. 10-49713-A-7 SUSAN HULSEBOSCH
HCS-5

MOTION TO CONFIRM AND TO EXTEND TRUSTEE'S DEADLINE TO OBJECT TO EXEMPTIONS
6-12-15 [137]

Tentative Ruling: The motion will be denied as unnecessary.

The trustee asks the court to declare that the deadline for filing objections to the debtor's exemption in unpaid pre-petition child and spousal support has not started running yet, as the trustee has not recovered anything on account of the unpaid pre-petition support owed by the debtor's former spouse. In the alternative, the trustee seeks a 60-day extension of the deadline to object to the exemption of the unpaid pre-petition support.

This case was filed on November 10, 2010. The debtor's 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, the debtor filed her Amended Schedules B and C. Docket 31. 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."

On March 22, 2010, the trustee entered into a 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. The order approving the stipulation was entered on March 24, 2011. Docket 30.

The trustee has obtained an order against the debtor's former spouse for the payment of the support, but she has collected nothing for the estate on account of the order.

On April 14, 2015, the state court entered an order that the debtor's former spouse owed as of November 2010 (pre-petition), $36,427.01 for unpaid child support and $41,457.61 for unpaid spousal support. The order also provided for interest, but required the parties to work together in calculating the interest. Docket 149, Ex. C at 8, 9.

The estate's special counsel and counsel for the debtor's former spouse entered into a stipulation that was reduced to an order, entered on May 29, 2015, calculating through March 30, 2015 $28,390.92 in owed child support interest and $24,297.63 in owed spousal support interest, bringing the grand total owed by the former spouse to $130,573.17. Docket 149, Ex. D at 1-2.

However, whether the 60-day deadline began running on April 14, 2015 or it has not started running yet does not have to be determined by the court because the trustee filed her objection to the debtor's exemption of the support on June 12, 2015. The objection is being heard on this calendar.

If the 60-day deadline had started running on April 14, 2015, the deadline for filing this motion would have been June 15, 2015, as the 60th day after April 14, 2015 falls on a Saturday. See Fed. R. Bankr. P. 9006(a)(1)(C). Hence, the objection was timely filed under either scenario and the court does not have to extend the deadline because the trustee has already filed her objection.

4. 10-49713-A-7 SUSAN HULSEBOSCH OBJECTION TO
HCS-6 EXEMPTIONS
6-12-15 [144]

Tentative Ruling: The objection will be sustained.

The trustee objects to the debtor's Cal. Civ. Proc. Code § 703.140(b)(10)(D) exemption in her entire unpaid pre-petition child and spousal support claim against her former spouse. The claim is valued at $56,000.

This case was filed on November 10, 2010. The debtor's 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, the debtor filed her Amended Schedules B and C. Docket 31. 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 objection is timely. On March 22, 2010, the trustee entered into a 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. The order approving the stipulation was entered on March 24, 2011. Docket 30.

The trustee has obtained an order against the debtor's former spouse for the payment of the support, but she has collected nothing for the estate on account of the order.

On April 14, 2015, the state court entered an order that the debtor's former spouse owed as of November 2010 (pre-petition), $36,427.01 for unpaid child support and $41,457.61 for unpaid spousal support. The order also provided for interest, but required the parties to work together in calculating the interest. Docket 149, Ex. C at 8, 9.

The estate's special counsel and counsel for the debtor's former spouse entered into a stipulation that was reduced to an order, entered on May 29, 2015, calculating through March 30, 2015 $28,390.92 in owed child support interest and $24,297.63 in owed spousal support interest, bringing the grand total owed by the former spouse to $130,573.17. Docket 149, Ex. D at 1-2.

Whether the 60-day deadline began running on April 14, 2015 or it has not started running yet does not have to be determined by the court because under

either scenario this objection is timely. If the 60-day deadline had started running on April 14, 2015, the deadline for filing this motion would have been June 15, 2015, as the 60th day after April 14, 2015 falls on a Saturday. See Fed. R. Bankr. P. 9006(a)(1)(C).

As this objection was filed on June 12, 2015, it is timely under either scenario. The court also notes that the debtor does not challenge the timeliness of the objection.

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."

A claim of exemption is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Under Rule 4003(c), once an exemption has been claimed, the objecting party has the burden to prove that the exemption is improper. Carter at 1029 n.3; Cerchione at 548; Gonzales v. Davis (In re Davis), 323 B.R. 732, 736 (B.A.P. 9th Cir. 2005).

"Once the debtor claims an exemption on her bankruptcy schedules, 'the objecting party has the burden of proving that the exemptions are not properly claimed.' Fed. R. Bankr.P. 4003(c). Thus, in this case, the trustee had the burden to show that debtor had not properly claimed the exemption."

Davis at 736.

This means that the objecting party has both the burden of production, *i.e.*, to produce evidence in support of the objection (also known as the burden of going forward) and the burden of persuasion. Carter at 1029 n.3; Cerchione at 548.

Even if the presumption is rebutted with evidence from the objecting party, forcing the debtor to come forward with unequivocal evidence to support the exemption, "[t]he burden of persuasion remains with the objecting party." Carter at 1029 n.3.

But, when the objecting party produces sufficient evidence to rebut the presumptive validity of the exemption claim, the burden of production shifts to the debtors to establish the validity of the exemption.

Even though the burden of persuasion always remains with the objecting party, when the objecting party overcomes the presumptive validity of the exemption claim, the debtors have the burden "to come forward with unequivocal evidence to demonstrate that the exemption is proper." Carter at 1029 n.3; see also Cerchione at 549.

The standard for the objecting party's burden of persuasion is preponderance of the evidence. Nicholson at 631-33, 634 (holding that the applicable standard to exemption objections is preponderance of the evidence and citing Grogan v. Garner, 498 U.S. 279, 286 (1991), and resolving the issue of what is the standard for establishing bad faith in the context of exemption objections).

"Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." Id. at 631 (quoting United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994)).

Despite the foregoing, there is some authority that the debtor has the ultimate burden of persuasion to establish entitlement to the exemption. In re Barnes, 275 B.R. 889, 899 (Bkrtcy. E.D. Cal. 2002) (discussing a change to the burden of proof as to exemptions after Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000)). See also Cal. Civ. Proc. Code § 703.580(b) (prescribing that "[a]t a hearing under this section, the exemption claimant has the burden of proof").

Turning to the merits of the objection, the court rejects the contention that judicial estoppel prevents the debtor from asserting the exemption in the support claim against her former spouse.

The trustee contends that the debtor has taken inconsistent positions as to whether her former spouse owes anything on account of the support claim. While this may be true, it does not impact the debtor's exemption claim. Bankrupt debtors are not prohibited from asserting exemptions in assets that have no value. In fact, debtors quite often claim exemptions in assets that would not have been administered by the trustee, even in the absence of the exemptions.

In other words, whether or not the debtor can be estopped from claiming that the former spouse owes nothing on the claim, does not invalidate her exemption in the claim. The debtor's position on the value or validity of the support claim is separate and independent from her position on the exemption of the support claim.

Further, the court rejects the debtor's contention that the child support aspect of the support claim is not property of the bankruptcy estate. It has been disingenuous for the debtor not to cite a single California decision on this point.

"The courts have presumed that where the action is for accrued child support, it is one for reimbursement to the 'custodial' parent, notwithstanding the fact that the award itself may have been for the benefit of the child."

In re Utigard, 126 Cal. App. 3d 133, 144 (1981).

"It is well established that when a custodial parent brings an action for payment of child support arrearages as distinguished from an initial action for support or request for modification, the child is not the real party in interest. [citations omitted] This is so essentially because these proceedings are seen as a means of providing reimbursement to the custodial parent who is presumed to have supported the child during the period arrearages accrued."

In re Lackey, 143 Cal. App. 3d 698, 707 (1983) (citing Utigard); see also Morris v. Cohen, 149 Cal. App. 3d 507, 515 n.2 (1983) (superseded on other grounds).

In other words, on the November 10, 2010 petition filing date, the debtor was the real party in interest as to the child support aspect of the support claim, given that she had advanced her two children's living expenses that should have been covered by the unpaid child support payments from her former spouse. Thus, the child support aspect of the claim is property of the estate.

Furthermore, the debtor cannot exempt unpaid pre-petition support under section 703.140(b)(10)(D).

Cal. Civ. Proc. Code § 703.140(b)(10)(D) 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."

Rights to exemptions of property are determined as of the petition filing date. 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 exemptions of Cal. Civ. Proc. Code § 703.140(b)(10) involving the "reasonably necessary" support standard have been applied to the debtor's *current* - as of the petition date - and anticipated *future* financial condition. 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)); see also Frank v. Wiggins (In re Wiggins), 341 B.R. 506, (M.D. Pa. 2006) (applying 11 U.S.C. § 522(d)(10)(E), which contains the same "reasonably necessary" standard found in section 703.140(b)(10)(D) and (E)).

The court has found no authority applying the "reasonably necessary" support standard of Cal. Civ. Proc. Code § 703.140(b)(10)(D) to past child or spousal support.

Starting with the November 10, 2010 petition date, then, Cal. Civ. Proc. Code § 703.140(b)(10)(D) looks forward into the debtor's financial condition.

The statute limits the exemption only to the debtor's "right to receive" support, and not to the debtor's "claim for support," implying a right to receive support only prospectively. If the right to receive were to include unpaid pre-petition support, in addition to post-petition support, the statute would have referred to the debtor's "claim for support," which would have included right to receive both unpaid pre-petition and post-petition payment. The statute does not do this, however. Its language makes no reference to "claim" much less "pre-petition claim."

This is clear also in that although the language of section 703.140(b)(10)(D) is virtually identical to and was adopted from 11 U.S.C. § 522(d)(10)(D), which uses the term "claim" in other parts of section 522, "claim" is not part of section 522(d)(10)(D) or section 703.140(b)(10)(D). See, e.g., 11 U.S.C. § 522(e).

Finally, whether or not the "right to receive" under Cal. Civ. Proc. Code § 703.140(b)(10)(D) pertains only to prospective post-petition support, and not to unpaid pre-petition support, the debtor has not satisfied the "reasonably necessary" standard of the statute.

The debtor has not come forward with unequivocal evidence to demonstrate that the exemption is proper, namely that as of the petition date the unpaid pre-petition support was reasonably necessary for her prospective support and the prospective support of any of her dependents. Carter at 1029 n.3; see also Cerchione at 549.

And, whether or not the evidentiary burden standard of Fed. R. Bankr. P. 4003(c) is subject to California's law that places the evidentiary burden for entitlement to the exemptions squarely on the debtor, the trustee here cannot disapprove a negative, namely, that the debtor meets the requirements of Cal. Civ. Proc. Code § 703.140(b)(10)(D) as of the petition date. See Cal. Civ. Proc. Code § 703.580(b) (prescribing that "[a]t a hearing under this section, the exemption claimant has the burden of proof").

Hence, the debtor is still required to come forward with evidence establishing her entitlement to the section Cal. Civ. Proc. Code § 703.140(b)(10)(D) exemption.

The court rejects the debtor's reliance on her pre-petition financial condition to establish the reasonably necessary standard of section 703.140(b)(10)(D). The debtor complains that the trustee "ignores any and all of the financial issues the debtor faced prior to the filing her bankruptcy petition." Docket 154 at 11. Yet, this is not the standard of the exemption statute.

As mentioned above, the "reasonably necessary" support standard has been applied only to the debtor's *current* - as of the petition date - and anticipated *future* financial condition. 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)); see also Frank v. Wiggins (In re Wiggins), 341 B.R. 506, (M.D. Pa. 2006) (applying 11 U.S.C. § 522(d)(10)(E), which contains the same "reasonably necessary" standard found in section 703.140(b)(10)(D) and (E)).

The debtor also asserts that, at the time of filing, she had no college education, she was an administrative assistant for a school district, her daughter was 18 and her son was 16 and the mortgage company holding the loan on her home obtained stay relief post-petition, ultimately foreclosing on her home. The debtor claims that as of the petition date her expenses exceeded her income by $651.25.

However, while it is true that Schedule J (Docket 1) represents that the debtor's monthly net income was a negative $651.25 as of the petition date, the court is not persuaded with the debtor's net income calculations. The debtor arrived at this negative net income figure by claiming to be paying $1,500 a month in mortgage. Docket 1, Schedule I.

According to GMAC Mortgage's stay relief motion, filed on January 10, 2011, the debtor had not made mortgage payments since September 2009. Dockets 10, 12 at 3, 13. Schedule I then is inaccurate in claiming that the debtor was making $1,500 a month in mortgage payments.

Importantly, the debtor listed the home subject to GMAC's mortgage as her residence on the bankruptcy petition. Docket 1 at 1. In other words, as of the petition date, the debtor's monthly net income was a positive $848.75 and not a negative $651.25. In the year leading up to the bankruptcy filing, the debtor had a positive monthly income of approximately $848.75 as she was not paying her mortgage. The debtor misrepresented then that she was paying $1,500 a month on account of her mortgage.

She continued not to pay her mortgage post-petition, until the short-sale of the home, which appears to have taken place in or about May 2011, when the

debtor claims to have moved to a home where she paid $1,200 a month in rent. In November 2011, she moved to another home, where she paid $1,100 a month in rent. In July 2012, she moved once again, this time paying $1,350 a month in rent. In August 2013, the debtor moved in back with her parents. Docket 155 at 5.

In December 2013, as she had remarried, the debtor moved to Southern California to live with her new husband. That is when she resigned from the job where she was working as of the petition date.

Nevertheless, the court does not have evidence about how or whether the debtor's other household expenses changed during this time. This is important especially with respect to the debtor's children. The court has no information about what happened to her daughter, who appears to have turned 18 years old in December 2010, ceasing to be a dependent of the debtor. Docket 1, Schedule I (stating that "[a]ccording to Debtor, her ex-husband keeps 18 year-old daughter's child support of $467 and uses 100% of it to pay Debtor's half of college expenses [*sic*] this support ends on December 4, 2010").

For instance, if she moved out of the debtor's home, did the household expenses decrease, and by how much? If she did not move out of home, did she find work and, if she did, how much did she contribute to the household, if any? The same information is relevant as to the debtor's son, who must have turned 18 years old on or before November 2012. The opposition is unclear as to when he turned 18.

The opposition makes no effort to discuss this information in light of the debtor's reasonable necessity for support.

Although the debtor complains that her salary decreased to $3,500 a month, when she moved to Southern California, she ignores the fact that she was now remarried and her new husband's income counted toward her support. Yet, the debtor does not disclose her husband's income.

More, the debtor's claim to the unpaid pre-petition support is an affront to her deciding in April 2013 that she no longer needs ongoing support payments from her former spouse, thus executing a stipulation for the cessation of all support in May 2013. As part of that stipulation, the debtor also agreed that she has no claim for any unpaid pre-petition support, from which the court infers that the debtor at that time did not herself think the unpaid pre-petition support to be reasonably necessary for her support at any time post-petition.

This is significant because by May 2013 the debtor had gone through much of her purported post-petition financial hardship. In May 2013, both of her children were 18 years old or older, meaning that they were either working and helping with household expenses or, even if not working, they were no longer dependents of the debtor.

The debtor's failure to be specific in the opposition about her monthly household budget post-petition, as outlined above, and her April or May 2013 agreement with her former spouse to relinquish all support, including both ongoing post-petition support and to unpaid pre-petition support, leads this court to conclude that the unpaid pre-petition support was not reasonably necessary for the debtor's support anytime post-petition.

Thus, the debtor is not entitled to an exemption in the unpaid pre-petition

support under section 703.140(b)(10)(D). The objection will be sustained as to the exemption under section 703.140(b)(10)(D). The exemption claimed under Cal. Civ. Proc. Code § 703.140(b)(5) remains undisturbed as it is not challenged by the objection. The record has closed on this objection and the court will not allow any further filings after a timely filing of the reply.

5. 15-23221-A-7 GMW-1 — JOHN NORMINGTON III AND TERESA NORMINGTON — AMENDED MOTION TO DEFER ENTRY OF DISCHARGE 7-20-15 [26]

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

The motion will be granted.

The debtors are seeking a 30-day delay of the entry of their discharge, from July 13, 2015 to August 12, 2015, as they need more time to enter into a reaffirmation agreement with their vehicle loan creditors, Wells Fargo Bank and JPMorgan Chase Bank.

Fed. R. Bankr. P. 4004(c)(2) provides: "Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain."

Given that the debtors have not yet heard from the two creditors about whether the reaffirmation agreements will be signed, the court will order that the discharge be deferred to August 12, 2015. The motion will be granted.

Although the motion keeps referring to August 13 as being 30 days from July 30, July has 31 days and 30 days from July 13 is August 12 and not August 13.

6. 15-24643-A-7 CJO-1 — KRISTINA GOLDEN — MOTION FOR RELIEF FROM AUTOMATIC STAY 6-30-15 [11]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

Tentative Ruling: The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in North Highlands, California.

The debtor has filed a response to the motion, seeking clarification that the movant will not be entitled to attorney's fees presumably for bringing this motion.

The property has a value of $100,000 and it is encumbered by claims totaling approximately $235,158. 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 8, 2015.

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.

7. 15-24953-A-7 CYNTHIA COMBS — MOTION TO COMPEL ABANDONMENT 7-16-15 [10]
LLL-1

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the 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 debtor requests an order compelling the trustee to abandon the estate's interest in her massage therapist business.

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.

According to the motion, the business assets include hydraulic lift table, massage supplies, oils, minor massage equipment (with a total value of $750)

and a vehicle (2011 Chevrolet Impala with a value of $9,920). The table, supplies, oils and equipment were claimed as exempt in full. Only $171.22 of the vehicle was not claimed as exempt, after accounting for an exemption of $4,850 and an outstanding loan of $4,898.78.

Given the exemption claims and one encumbrance, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

8. 10-45360-A-7 CLAYTON/PENNY MITCHELL — MOTION TO AVOID JUDICIAL LIEN
CAH-3
VS. DISCOVER BANK — 5-7-15 [31]

Tentative Ruling: The motion will be granted.

A judgment was entered against Debtor Clayton Mitchell in favor of Discover Bank for the sum of $13,434.63 on April 6, 2010. The abstract of judgment was recorded with Sacramento County on September 1, 2010. That lien attached to the debtor's residential real property in Carmichael, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $300,000 as of the petition date. Docket 34. The unavoidable liens totaled $420,988 on that same date, consisting of a single mortgage in favor of Onewest Bank. Docket 34. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $18,389 in Schedule C. Dockets 33 & 30.

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. 12-38363-A-7 WILLIAM ST CLAIR — ORDER TO SHOW CAUSE
7-2-15 [248]

Tentative Ruling: The request for a certified order will be denied.

The court entered an order granting a motion to sell in favor of the trustee on June 10, 2015. Docket 245. On the same date, the trustee's counsel requested a certified copy of that order with the clerk's office. However, no payment was made on account of the certified order request. As a result, this order to show cause was generated. As no payment has been made on the certified order request yet, the court will deny the issuance of a certified order.

10. 15-24880-A-7 WAYNE HUNTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1
TRAVIS CREDIT UNION VS. — 7-8-15 [17]

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, Travis Credit Union, seeks relief from the automatic stay with respect to an already surrendered 2008 Ford F450 vehicle. According to the movant, the vehicle has a value of $24,908 and its secured claim is approximately $50,831. Docket 23.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, the debtor has surrendered the vehicle. Docket 23.

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

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

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

11. 15-22990-A-7 XTREME ELECTRIC, INC. MOTION TO EMPLOY
7-13-15 [18]

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

The motion will be granted.

The trustee seeks approval to employ Peter Cianchetta as special counsel for the estate, to prosecute the collection of an outstanding $720,459 receivable from Segue Construction (sub-contract number 246-16100), a former general contractor of the debtor. The estate seeks to employ Mr. Cianchetta on a 50% contingency fee basis, based on "the total monetary recovery." Docket 20 ¶ 8.

Mr. Cianchetta also represents the debtor in this case.

The trustee has been unable to find another law firm to represent him on account of this receivable.

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

The court concludes that the terms of employment and compensation are reasonable. Mr. Cianchetta is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate, even though he represents the debtor as well in this case.

With respect to the recovery under the subject receivable, the estate's interests are not in conflict with the interests of the debtor. The debtor is a corporation and it will not receive a chapter 7 discharge. Thus, employing the debtor's counsel as special counsel to prosecute the collection of this receivable for the estate does not impair the interests of the estate. Accordingly, the motion will be granted.

12. 14-29391-A-7 ENRIQUE QUILES — MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE 7-1-15 [60]
WC-1

Tentative Ruling: The motion will be granted.

First National Insurance Company of America seeks leave to file a timely proof of claim in this case. FNICA asserts that it never received notice of this bankruptcy filing. The debtor filed this case on September 19, 2014. FNICA's claim is based on an indemnity agreement the debtor entered into in consideration for FNICA providing a surety bond on behalf of Geo Grout, Inc., in connection with construction projects in California. FNICA received multiple claims on the bond. FNICA filed a UCC-1 financing statement against the debtor and ultimately also filed a lawsuit against the debtor. In December 2010, FNICA and the debtor entered into a settlement agreement, involving a promissory note executed by the debtor, which note was secured by deeds of trust on two real properties, one in Fairfield, California and the other in Oroville, California.

After the debtor defaulted under the settlement agreement, a judgment was entered against the debtor pursuant to a stipulation for entry of judgment under the terms of the settlement. The judgment is for $597,332.72 plus post-judgment interest at 10% per annum. An abstract of the judgment was recorded in Solano County on September 29, 2011.

Fed. R. Bankr. P. 9006(b)(1) provides: "*Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the*

result of excusable neglect."

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

The debtor filed this petition on September 19, 2014. But, the creditor matrix does not list FNICA as a creditor, resulting in FNICA not being notified of the filing. Dockets 4 & 13. The debtor's response to the motion confirms this. On November 6, 2014, the trustee filed a notice of a claims bar date - set for February 6, 2015. Docket 17. FNICA was not given notice of the notice. Docket 22.

The debtor filed an Amended Schedule D on February 24, 2015, after the claims bar date had expired, listing FNICA in it. Docket 45. The court does not see a certificate of service on the docket, however, indicating that the debtor or anyone else served the Amended Schedule D on FNICA.

FNICA did not learn of the bankruptcy filing until about April 9, 2015. On May 12, FNICA inquired with the trustee about a stipulation for leave to file a timely proof of claim. The trustee refused to stipulate to the leave, however.

Given the foregoing, there is excusable neglect for the granting of leave for FNICA to file a timely proof of claim. There is no danger of prejudice to the debtor. In fact, the prejudice is to FNICA, as the debtor did not list FNICA in the creditor matrix when he filed this case, even though he knew that FNICA held a claim against him.

The length of delay is not substantial as the trustee is still administering the estate and the court has no evidence that distributions have been made in this case yet. Also, as FNICA did not know of the filing until April 2015, FNICA had no control over the reason for the delay. The court has no indication that FNICA acted in any way other than in good faith. Accordingly, the motion will be granted. The court will grant leave to FNICA to file a timely proof of claim in this case. The proof of claim shall be filed within seven days of the August 3 hearing on this motion.

13. 15-23396-A-7 GERALD BEDDELL — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDW-1
CAM IX TRUST VS.
7-10-15 [14]

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

The movant, CAM IX Trust, seeks relief from the automatic stay as to a real property in Vacaville, California.

With respect to the debtor, the movant has produced evidence that the property has a value of $525,000 and it is encumbered by claims totaling approximately $520,413. Dockets 16 & 18. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is in first priority position and secures a claim of $444,407. This leaves approximately

$4,586 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant also has an equity cushion of approximately $80,592. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after **August 3, 2015.** The trustee filed a report of no distribution on June 3, 2015 and there is nothing in the file suggesting that the case will remain open a significant period beyond August 3, 2015. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on June 3, 2015.

The court concludes that 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 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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

FINAL RULINGS BEGIN HERE

14. 13-26504-A-7 IGNATIUS FRANCO — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 6-30-15 [56]
U.S. 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, U.S. Bank, seeks relief from the automatic stay as to a real property in Auburn, California.

Given the entry of the debtor's discharge on August 26, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $575,000 and it is encumbered by claims totaling approximately $750,995. The movant's deed is the only deed against the property, securing a claim of approximately $750,214.

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

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

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

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

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

15. 15-25507-A-7 STEPHANIE LOTITO
SMR-1
VINCENZIA MELLONE VS.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-15 [24]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on July 28, 2015, dissolving the automatic stay as a matter of law. See 11 U.S.C. § 362(c)(2)(B). Also, the movant does not seek retroactive or in rem relief from stay. Docket 24 at 7.

16. 13-35308-A-7 DOROTHY PARENT
HCS-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
7-6-15 [372]

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $95,000 in fees and expenses, reduced from $97,364.75 in fees and $2,091.35 in expenses. This motion covers the period from December 16, 2013 through June 1, 2015. The court approved the movant's employment as the trustee's attorney on December 30, 2013. In performing its services, the movant charged hourly rates of $90, $225, $250, $275, $315, 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, without limitation:

(1) assisting the estate with the investigation of the debtor's assets,

(2) assisting with the analysis of claims,

(3) preparing and prosecuting a motion for the sale of a real property in Sacramento, California,

(4) reviewing status of pending state court action involving the debtor's sale of a real property to Enterprise Rancheria Estom Yumeka,

(5) researching issues pertaining to the debtor's claims in the lawsuit and making appearances at hearings,

(6) unsuccessfully attempting to sell the debtor's claims and to settle the claims,

(7) preparing and prosecuting a motion to abandon the estate's interest in the state court lawsuit,

(8) reviewing pleadings in two adversary proceedings filed by the creditor clients of attorney Laurence Blunt,

(9) responding to the initial complaint in the first adversary proceeding and monitoring the second adversary proceeding,

(10) investigating the estate's 50% interest in a real property in Tehama County, California,

(11) negotiating settlement with the creditors represented by Mr. Blunt,

(12) responding to Mr. Blunt's motion to remove the trustee and Mr. Blunt's motion to vacate the order approving the employment of the realtor for the Tehama property,

(13) prosecuting a contested motion to employ special counsel to sell 100% of the Tehama property,

(14) responding to Mr. Blunt's appeals of the orders denying his motion to remove the trustee, vacating the realtor's employment approval, and granting of the trustee's motion for appointment of special counsel to sell the Tehama property,

(15) responding to two motions for the substitution of Robert Swendeman,

(16) general advising the trustee about the administration of the estate, and

(17) preparing and filing employment and compensation motions.

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

17. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO APPROVE COMPROMISE
DNL-13 7-2-15 [277]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and Brian Katz, as trustee of the Newell Trust, and Zandee Newell and Marianne Newell, both beneficiaries of the Newell Trust. The settlement resolves a pending usury district court claim the estate had asserted against

the Newell Trust and its two beneficiaries. The claim is based on two promissory notes executed by the debtor in favor of the trust. The claim seeks $150,871.41 in payments exceeding principal, excluding interest and attorney's fees.

Under the terms of the compromise, the Newell Trust will pay $35,000 to the estate and will execute a promissory note for another $55,000, which will be due and payable in 18 months. The note will bear a 4% interest, calling for monthly payments of $1,200. The note will be secured by an unimproved real property asset owned by the trust, consisting of 318 acres in Placer County, as well as secured by the guaranty notes executed by Mark and Nancy Weiner and their affiliate Susanville Village, L.L.C. The Weiners were the debtor's principals.

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. Given the many unknowns about the circumstances of the underlying loan transactions, the repayments of the notes, the guarantees executed by the Weiners, the dispute over whether the modification of the $550,000 note was a novation, the debtor's switch of financing its mobile homes from Bombardier, which was exempt from usurious restrictions, to the trust, 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.

18. 11-44616-A-7 LOYD/VERNA HOSTETTER — MOTION TO APPROVE COMPENSATION OF TRUSTEE
KJH-9 — 7-3-15 [130]

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

The motion will be granted.

The chapter 7 trustee, Kimberly Husted, has filed her first and final motion for approval of compensation. The requested compensation consists of $4,007.29 in fees and $239.12 in expenses, for a total of $4,246.41. The services for the sought compensation were provided from March 19, 2013 through the present. The sought compensation represents 33.7 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $32,572.92 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $4,007.29 ($1,250 (25% of the first $5,000) + $2,757.29 (10% of the next $45,000 (or $27,572.92)) + $0.00 (5% of the next $950,000 (or $0.00)). Hence, the requested trustee fees of $4,007.29 do not exceed the cap of section 326(a).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) listening to recording of the meeting of creditors conducted by the prior trustee, (3) evaluating a sublease business asset, (4) employing professionals to assist the estate in the recovery of the rental income collected by the debtors and the eventual sale of the sublease, (5) obtaining court permission to operate the business, (6) negotiating sale of the sublease, (7) reviewing and analyzing claims, (8) addressing tax issues, (9) preparing final report, and (10) preparing compensation motion.

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

19. 15-23621-A-7 JAMES/AMY SKAGGS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-24-15 [18]
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.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2013 Dodge Grand Caravan minivan. The movant has produced evidence that the vehicle has a value of $15,925 and its secured claim is approximately $21,696. Docket 20 at 2-3.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on June 3, 2015. And, the movant already has possession of the vehicle.

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

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

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

20. 15-24629-A-7 JESUS/GREGORIA GARIBAY — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
BANK OF THE WEST VS. — 6-30-15 [11]

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

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $146,971 and it is encumbered by claims totaling approximately $183,231. 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 8, 2015.

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.

21. 08-20134-A-7 HENRY/DIANA AMOS — MOTION TO AVOID JUDICIAL LIEN
CAH-2
VS. PATTERSON FAMILY TRUST — 7-7-15 [30]

Final Ruling: The motion will be dismissed without prejudice because the motion was not served on the trustee of the Patterson Family Trust, the respondent. Although the motion was served to the attention of "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process," none of these are in charge of the trust. Docket 34. The respondent family trust is administered by a trustee.

And, while the debtor served the trust's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Further, the notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2).

However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. The motion papers were served on July 6, 2015, 28 days prior to the August 3 hearing. The rule specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

22. 14-24839-A-7 KENNETH/ALICIA UNG — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SSA-4 — 7-1-15 [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.

Law Offices of Steven Altman, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $6,429 in fees and $262.83 in expenses, for a total of $6,691.83. This motion covers the period from October 31, 2014 through the present. The court approved the movant's employment as the trustee's attorney on November 17, 2014. In performing its services, the movant charged hourly rates of $90, $250, and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) securing the debtor's exemption waiver and stipulation to the same, to enable the estate to sell a real property, (3) assisting the estate with the sale of a real property, (4) preparing and prosecuting a motion for approval of the sale, (5) reviewing amended schedules, and (6) preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

23. 09-20140-A-7 SHASTA REGIONAL MEDICAL CENTER, L.L.C. — MOTION FOR ADMINISTRATIVE EXPENSES
KJH-1 — 6-24-15 [744]

Final Ruling: The motion will be dismissed without prejudice. The proof of service for the motion (Docket 745) states that the motion was served on "each of the creditors named in the Pacer creditor matrix," but the proof of service does not identify the names and addresses of the creditors who were actually served with the motion. The court will not speculate about which "Pacer creditor matrix" the proof of service is referring to nor as to which creditors are on it. Accordingly, the motion will be dismissed without prejudice.

24. 15-22847-A-7 GILDA TAHMURESZADEH
BHT-1
CHRISTIANA TRUST VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-22-15 [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, Christiana Trust, seeks relief from the automatic stay as to a real property in Granite Bay, California.

Given the entry of the debtor's discharge on July 22, 2015, 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 $1,049,609 and it is encumbered by claims totaling approximately $1,455,743. The movant's deed is in first priority position and secures a claim of approximately $1,268,254.

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 22, 2015.

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.

25. 13-29754-A-7 TIMOTHY/SHAWN POLI
MET-3
VS. MIDLAND CREDIT MANAGEMENT, INC.

OBJECTION TO CLAIM
7-4-15 [82]

Final Ruling: The objection will be dismissed without prejudice because it was brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). The objection papers were served on July 4, 2015, only 30 days prior to the August 3 hearing. Docket 85. Yet, the notice of hearing requires written opposition to be filed at least 14 days prior to the hearing, consistent with Local Bankruptcy Rule 9014-1(f)(1). Docket 83.

However, claim objections are not governed by Local Bankruptcy Rule 9014-1(f). They are governed by Local Bankruptcy Rule 3007-1(b). And, objections set on 30 days' notice do not require written opposition. They are treated as motions set for hearing under Local Bankruptcy Rule 9014-1(f)(2), which permit opposition to be made at the hearing. Local Bankruptcy Rule 3007-1(b)(2).

Nevertheless, as the notice of hearing for this objection requires written opposition, it is incorrect. Accordingly, the objection will be dismissed without prejudice.

26. 12-23056-A-7 MARVIN/GINGER REIS
CJO-1
U.S. BANK TRUST, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-6-15 [75]

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, seeks relief from the automatic stay as to a real property in Roseville, California.

Given the entry of the debtor's discharge on July 14, 2015, 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 $144,000 and it is encumbered by claims totaling approximately $380,871. The movant's deed is in first priority position and secures a claim of approximately $333,343.

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 6, 2015.

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.

27. 15-24457-A-7 VERA GOPA — MOTION TO CONVERT CASE TO CHAPTER 13
MS-1 — 7-20-15 [11]

Final Ruling: The motion will be dismissed without prejudice because the notice of the hearing violates Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days' notice of the hearing on motions to convert. Yet, this motion was filed and served on July 20, 2015, only 14 days prior to the August 3, 2015 hearing. Dockets 11 & 26.

28. 11-28263-A-7 HAYWOOD BEAIRD — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
ADJ-4 — 6-15-15 [45]

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.

Fores ■ Macko, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,600 in fees and $55.16 in expenses, for a total of $1,655.16. This motion covers the period from January 12, 2015 through April 23, 2015. The court approved the movant's employment as the trustee's attorney on January 29, 2015. In performing its services, the movant charged an hourly rate of $250.

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 estate with the settlement of a judgment debt owed by the debtor's former spouse, (2) preparing and prosecuting a motion for approval of compromise of the debt, and (3) preparing and filing employment and compensation motions.

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

29. 15-25363-A-7 VALENTIN BRUTSKI — MOTION TO AVOID JUDICIAL LIEN
MS-1
VS. CAPITAL ONE BANK (USA), N.A.
7-6-15 [6]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,808.33 on January 29, 2010. The abstract of judgment was recorded with Sacramento County on July 27, 2012. That lien attached to the debtor's residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $189,664 as of the petition date. Dockets 8 & 9. The unavoidable liens totaled $125,595 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 9. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 8 & 9.

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).

30. 15-25363-A-7 VALENTIN BRUTSKI — MOTION TO AVOID JUDICIAL LIEN
MS-2
VS. CAPITAL ONE BANK (USA), N.A.
7-6-15 [11]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,565.49 on July 2, 2010. The abstract of judgment was recorded with Sacramento County on August 16, 2011. That lien attached to the debtor's residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $189,664 as of the petition date. Dockets 13 & 14. The unavoidable liens totaled $125,595 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 13 & 14.

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

31. 15-25363-A-7 VALENTIN BRUTSKI — MOTION TO AVOID JUDICIAL LIEN
MS-3
VS. CAPITAL ONE BANK (USA), N.A.
7-6-15 [16]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,248.54 on July 2, 2010. The abstract of judgment was recorded with Sacramento County on August 16, 2011. That lien attached to the debtor's residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $189,664 as of the petition date. Dockets 18 & 19. The unavoidable liens totaled $125,595 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 19. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 18 & 19.

The respondent holds a judicial lien created by the recordation of an abstract

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

32. 15-23465-A-7 ROBERT COONS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 6-25-15 [24]
FORD MOTOR CREDIT COMPANY, L.L.C. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will be dismissing the motion as moot, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, Ford Motor Credit Company, seeks relief from the automatic stay as to a 2007 Ford F150.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On November 9, 2012, the debtor filed a chapter 13 case (case no. 12-39793). But, the court dismissed that case on March 17, 2015 due to the debtor's failure to make plan payments. The debtor filed the instant case on April 29, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on May 29, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on May 29, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. §§

362(c)(3)(A) and 362(j).

33. 12-33467-A-7 RONALD DUNCAN — MOTION TO APPROVE COMPROMISE
DNL-14 — 6-30-15 [325]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and the debtor's former counsel, Stephen Reynolds, and the debtor's former spouse, Kathleen Duncan, on the other hand, resolving the parties' respective interests in: (1) two real properties that were abandoned back to the debtor prior to his passing on May 10, 2014, and $16,000 in exempt funds that were divided equally between Mr. Reynolds and Ms. Duncan in October 2014.

Ms. Duncan inherited the two abandoned homes under the debtor's will. The equal division of the exempt funds was based on a $13,500 secured claim for post-petition attorney's fees asserted by Mr. Reynolds and a $13,500 administrative claim asserted by Ms. Duncan for paying utilities for the homes ($3,000), covering the debtor's burial costs ($7,500) and paying attorney's fees ($3,000).

After the trustee in this case divided the exempted $16,000 equally between Mr. Reynolds and Ms. Duncan in October 2014, the court substantively consolidated Kathleen Duncan's pending chapter 7 case into this case in December 2014, effectively bringing the abandoned homes and exempt funds back into this consolidated estate for administration. See 11 U.S.C. § 541(a)(5)(A).

Under the terms of the compromise:

- the abandoned homes are deemed abandoned to Ms. Duncan as of the date the homes were abandoned previously in her case;

- Mr. Reynolds shall be allowed a $13,500 secured claim against the exempt funds;

- Ms. Duncan shall be allowed a $13,500 administrative claim against the consolidated estate for her covering the debtor's burial expenses, payable as follows: $5,500 to Mr. Reynolds, $5,500 to Ms. Duncan, and a "$2,500 credit in favor of the estate for the portion of the Exempt Funds received by Kathleen not subject to Reynolds' allowed secured claim" (Docket 325 at 3), effectively paying each of the $13,500 claims of Mr. Reynolds and Ms. Duncan in full; and

- Mr. Reynolds and Ms. Duncan shall release any claims against this consolidated estate.

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 abandonment of the homes, equal division of the exempt funds, and the determinations made in each respective case prior to consolidation of the estates, given the small amount at stake, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

34. 12-33467-A-7 RONALD DUNCAN — OBJECTION TO CLAIM
DNL-16
VS. LB CONSTRUCTION, INC. — 6-29-15 [319]

Final Ruling: The objection will be dismissed without prejudice because it was not served on the respondent creditor in accordance with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor did not serve the objection on LB Construction, Inc., by addressing it to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. This is especially important as the law firm which filed the proof of claim that is the subject of this objection, POC 25-1, changed its name from Radoslovich | Krogh to Radoslovich | Parker. Docket 324 at 2-3.

35. 14-32070-A-7 CAPITOL AIR SYSTEMS, INC. — MOTION TO APPROVE COMPROMISE
JRR-3
6-17-15 [153]

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

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and JPMorgan Chase Bank, which has a blanket lien on all of the debtor's personal property assets, which have been reduced to cash. The trustee has been able to sell estate property and collect a total of $107,538.73 (including sales, collections, the debtor's petty cash account). The bank has a lien on $95,098.73 from that amount. $12,440 of the funds are unencumbered.

Under the terms of the compromise, the bank has agreed to grant the estate a carve-out as follows: $12,000 to cover trustee administrative fees and expenses, $18,200 to cover administrative rent (for the space occupied by assets pending their sale), $5,000 to general unsecured creditors, and the bank has agreed to divide equally with the estate the recovery from any other receivables.

The court understands the settlement to apply only to the encumbered portion of the proceeds and property held by the estate.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the carve-out will pay the trustee's fees and the administrative rent, given the $5,000 that will be made available to general unsecured creditors - in addition to unencumbered funds, given that the estate has the potential to share equally in any further recovery from encumbered receivables, given the trustee's otherwise inability to sell any of the assets in light of the sizeable administrative rent claim, and given the inherent costs, risks and delay 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.

36.	14-32070-A-7 JRR-4	CAPITOL AIR SYSTEMS, INC.	MOTION TO PAY 6-18-15 [158]

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

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

The motion will be granted.

The trustee seeks permission to pay the post-petition expenses incurred by the estate's now former landlord, Grant Carmichael, for the disposal of waste motor oil in accordance to California Department of Toxic Substances Control protocol and for the disposal of trash, left on the leased premises. Mr. Carmichael paid $2,740 for the disposal of the oil and paid $133,96 for the disposal of the trash.

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

In addition, the trustee has an obligation to "timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1)." 11 U.S.C. § 365(d)(3); see also In re Bryant Universal Roofing, Inc., 218 B.R. 948, 952 (Bankr. D. Ariz. 1998).

The court granted Mr. Carmichael an administrative rent claim for the post-petition storage (from December 12, 2014 petition date through March 31, 2015) of the estate's personal property, based on a pre-petition nonresidential real property lease, until the sale of the property for the benefit of the estate. Docket 163. As the oil and the trash were on the leased premises and belonged to the estate, their proper disposal benefitted the estate. Accordingly, the court will allow payment of the claim as an administrative expense claim. The motion will be granted.

37. 15-22176-A-7 FERNANDO ANDRADE — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
HSBC BANK USA, N.A. VS. — 6-23-15 [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, HSBC Bank U.S.A., seeks relief from the automatic stay as to a real property in North Highlands, California.

Given the entry of the debtor's discharge on July 7, 2015, 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 $191,000 and it is encumbered by claims totaling approximately $308,009. 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 April 29, 2015.

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.

38. 15-24886-A-7 SON WOOD — MOTION FOR RELIEF FROM AUTOMATIC STAY
EJS-1
OAKMONT PROPERTIES VS. — 6-25-15 [14]

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

The motion will be granted.

The movant, Oakmont Properties, seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in June 2015. The movant served the debtor with a three-day notice to pay or quit on June 5, 2015. The debtor filed this bankruptcy case on June 17, 2015.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, the debtor has defaulted under the lease agreement by failing to pay the rent due from June 2015 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the 3-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

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 exercise its state law remedies to obtain possession of the property.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state law. No other relief will be awarded.

No fees and costs will be 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.

39. 15-23787-A-7 SERENA NATIVIDAD — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 7-6-15 [17]
FORD MOTOR CREDIT COMPANY, L.L.C. VS.

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

The motion will be granted.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay with respect to an already surrendered 2013 Ford Escape vehicle. The vehicle has a value of $17,202 and its secured claim is approximately $26,683.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on June 15, 2015. And, the debtor surrendered the vehicle post-petition, on or about June 8, 2015. Docket 19 at 3.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and

to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

40. 15-23288-A-7 MARY KIRK — MOTION TO AVOID JUDICIAL LIEN
NBC-1
VS. G.E. MONEY BANK
6-9-15 [16]

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

The motion will be granted.

A judgment was entered against the debtor in favor of GE Money Bank (now known as Synchrony Bank) for the sum of $6,615.31 on November 19, 2010. The abstract of judgment was recorded with Tehama County on February 10, 2011. 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). The subject real property had an approximate value of $25,000 as of the petition date. Docket 1, Schedule A. The unavoidable liens totaled $0.00 on that same date. Dockets 18 at 1 & 1, Schedule A. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $25,000 in Schedule C. Docket 1.

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).

41. 15-21789-A-7 CHARLES HAGEE AND NORMA BREEDEN-HAGEE — MOTION TO SELL
DMW-1
7-8-15 [17]

Final Ruling: The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 18. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy

Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

42. 15-24996-A-7 BEATRICE SMITH WARE — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1
CHIU AND TING LIVING TRUST VS. — 6-24-15 [12]

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

The motion will be granted.

The movant, Chiu and Ting Living Trust, 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 debtor leased it from the movant. The debtor defaulted under the lease agreement in April 2015. The movant served the debtor with a three-day notice to pay or quit on June 3, 2015. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on June 12, 2015. The debtor filed this bankruptcy case on June 22, 2015.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from April 2015 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the 3-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

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 exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be 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.

43. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO APPROVE COMPENSATION OF TRUSTEE
KJH-1 — 6-17-15 [200]

Final Ruling: The motion will be dismissed without prejudice because there are no exhibits attached to the motion. The exhibit pleading contains only the exhibit cover page. None of the listed exhibits are appended to the exhibit pleading. Docket 203. As a result, the court cannot confirm some of the factual assertions in the motion. Accordingly, the motion will be dismissed without prejudice.

44. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION FOR ADMINISTRATIVE EXPENSES
KJH-2 — 6-18-15 [205]

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

The motion will be granted.

The trustee requests the allowance of payments of 2014 post-petition estate income tax liability to the IRS in the amount of $6,068 and to the California Franchise Tax Board in the amount of $7,610.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on January 23, 2013. The tax liability in question was incurred in 2014. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.