UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 8, 2014 at 10:00 a.m.

NO TELEPHONIC APPEARANCES WILL BE PERMITTED ON THIS CALENDAR. THE COURT'S CONFERENCING EQUIPMENT IS OUT OF ORDER. PERSONAL APPEARANCES ARE REQUIRED.

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

1, 2, 4, 5, 6, 11

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

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

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

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

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

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY

APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 8, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 25, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 2, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 10-27515-A-7 TAA-2 — PREFERRED PROPERTIES, L.L.C. — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 7-16-14 [242]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's account, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $10,710.32 in fees and $0.00 in expenses. This motion covers the period from October 16, 2012 through May 31, 2014. The court approved the movant's employment as the estate's accountant on October 29, 2012. In performing its services, the movant charged hourly rates between $180 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 communicating with the trustee, advising the trustee about various tax and financial issues in the administration of the estate, reviewing prior tax returns, preparing a tax filing extension, reviewing documents provided by the trustee, reviewing monthly operating reports filed in the chapter 11 phase of the case, preparing tax returns.

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

2. 13-34622-A-7 TAA-2 — LONNIE NIELSON — MOTION TO ABANDON 7-18-14 [26]

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

The motion will be granted.

The trustee wishes to abandon the estate's 12.2% interest in real property in Sacramento, California. The estate's interest in the property is over-encumbered.

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

The trustee's investigation has revealed that the estate's 12/2% interest in the property has a value of approximately $65,000, but this does not account for an exemption claim of $25,214 and state tax liens in excess of $100,000 encumbering this fractional interest. POC 10 (asserting a $437,669.40 tax lien). The trustee has also discovered that the IRS holds a lien in excess of $100,000 on the fractional property interest. POC 3. Given this, the court concludes that the estate's interest in the property is of inconsequential value to the estate. The motion will be granted.

3. 12-38930-A-7 TERRY/JAMIE YORK — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
BANK OF AMERICA VS. — 4-1-14 [52]

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

The movant, Bank of America, seeks relief from the automatic stay as to real property in Placerville, California.

Given the entry of the debtor's discharge on March 18, 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 $550,000 and it is encumbered by claims totaling approximately $525,730. 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 approximately $275,804. This leaves approximately $24,270 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 $274,195. This equity

cushion is sufficient to adequately protect the movant's interest in the property until the trustee completes administration of the estate and the case is closed. At that point, the automatic stay will expire as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2)(A); see also 11 U.S.C. § 554(c). Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

4. 14-25434-A-7 GREGORY MONACO — MOTION FOR RELIEF FROM AUTOMATIC STAY
JO-9503
GLORIA BALDERAS VS. — 7-22-14 [34]

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, Gloria and Danilo Balderas, seeks relief from the automatic stay as to real property in Sacramento, California. The movant is the legal owner of the property and leased it to the debtor. The debtor defaulted under the lease agreement on March 1, 2014 and has not made rent payments since. The movant served the debtor with a three-day notice to pay or quit on May 2, 2014. On May 7, the movant filed an eviction action in state court against the debtor. Trial in the eviction action was scheduled for May 27. The debtor filed the instant case on May 23, 2014. The movant seeks relief from stay to exercise rights under state law to obtain possession of the property.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, he has defaulted under the lease agreement by failing to pay the rent since March 1, 2014. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to complete prosecution of the eviction action in order for that court to determine who is entitled to possession of the property.

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

No fees and costs 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.

5. 14-26952-A-7 FRANCISCO GALVAN AND MARIA JAUREGUI — MOTION TO COMPEL ABANDONMENT 7-25-14 [12]
DBJ-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 debtors request an order compelling the trustee to abandon the estate's interest in their sole proprietorship restaurant business, Taco Barn.

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 computers, table, chairs, grill, fryer, refrigerators, drive through system, salad bar, steam table, prep table, ice machine, and food and drinks inventory. The assets have a value of $5,000 and have been claimed fully exempt in Amended Schedule C. Given the exemption claim, 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.

6. 14-26257-A-7 PATRICIA PARK — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-23-14 [11]
MET-1
BANK OF THE WEST VS.

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

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay with respect to a 2005 Winnebago motor home. The movant has produced evidence that the vehicle has a value of $34,350 and its secured claim is approximately $40,719. In Schedule B, the vehicle has a value of $40,000.

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 vehicle has been surrendered by the debtor in accordance with her statement of intention. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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.

7. 14-20061-A-7 ANNE MAHONY — MOTION TO EMPLOY ATTORNEY(S) 7-11-14 [15]
DNL-1

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

The chapter 7 trustee requests authority to employ Desmond, Nolan, Livaich & Cunningham, as attorney for the estate. DNLC will assist the estate with the collection of the estate's non-exempt interest in a $40,000 loan the debtor made to her daughter pre-petition. The services include negotiating with the debtor's daughter, obtaining court approval of a settlement agreement with her, and preparing the related documents and pleadings. The estate's non-exempt interest in the loan is $18,000, as the debtor has exempted $22,000 in the loan proceeds. DNLC has already negotiated a settlement with the debtor's daughter for $9,000. The proposed compensation is a flat fee of $4,000.

The trustee also asks for authority to pay DNLC without a further court order.

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."

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

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

However, the court cannot approve payment of the requested compensation as there is no evidence in the record about how much time DNLC has spent on its services to the estate. Without this information, the court cannot determine whether the compensation to be paid is reasonable, in light of the rendered

services.

8. 12-41763-A-7 ANTHONY/SANDY GRECO — MOTION TO SELL
HSM-3 — 7-10-14 [64]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $155,000 to BAPCO, L.L.C. the estate's interest in:

- real property in Citrus Heights, California;

- real property in Granite Bay, California;

- 33.33% interest in 40 undeveloped acres of land in Apache County, Arizona; and

- Greco Partners, L.L.C., which owns interest in the following property, two real properties in Sacramento, California, one real property in Rancho Cordova, California, and Car Cage, Inc.

The trustee also seeks the court to make a good faith finding as to BAPCO under 11 U.S.C. § 363(m).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate other than in the ordinary course of business.

First, the debtors complain that they do not understand what the trustee means by requiring prospective overbidders to demonstrate financial ability to complete their purchase of the assets. This is a typical term required by trustees whenever they are selling an asset and are contemplating potential overbidding. There is nothing vague or ambiguous about the trustee's requirements. It is clear that the requirement requires an overbidder to show to it has the funds to close escrow within the period allotted under the terms of the proposed sale.

This objection is disingenuous and is made for the purpose of delaying or derailing the sale. The debtors made no attempt to contact the trustee about this term prior to filing the opposition. The opposition also does not allege that the debtors are planning to overbid. This objection will be overruled.

Second, the debtors complain that the Citrus Heights and Granite Bay properties have no equity and this "condition remains at the time of hearing." Docket 69 at 2. But, this is not basis for objecting to the sale of those properties, especially given that someone has offered to purchase the estate's interest in the properties.

More, the sale of the properties is subject to any liens and encumbrances and the buyer is aware of this.

The motion states that there may be some equity in the two real properties, but the trustee believes that sale of the properties as part of this transaction is in the best interest of the estate and the creditors, given anticipated delay and transactional and potential tax costs if the properties were to be sold separately. The trustee claims the same as to the property in Arizona, which is difficult to value being out-of-state land, and is owned only fractionally

by the estate.

Third, the fact that the debtors have exempted the property in Arizona is of no consequence either because the exemption claim - which is for the full value of the debtors' interest in the property, $3,722 - will be paid. Docket 26.

Fourth, the objection to the break-up fee will be sustained. The debtors are complaining that it should be 1% to 3% and not the proposed 12%. As admitted even by the trustee, the motion does not set forth facts that substantiate a 12% breakup fee. While the trustee has submitted evidence with her reply that seems to justify a 12% breakup fee, that evidence should have been included with the motion, giving an opportunity to parties in interest to respond to it. As it was filed with the reply, the debtors have not had an opportunity to respond to the evidence.

Fifth, given that the court has sustained the objection to the break-up fee, the initial overbid need not be $170,000.

As to the opposition by Bank of America, which holds mortgages on both the Citrus Heights and Granite Bay properties, the motion is clear that the sale of those properties is subject to any and all liens or encumbrances.

The court, however, will not include in the order approving a sale and granting this motion to spell out Bank of America's rights as to the properties. The court does not give declaratory relief without an adversary proceeding. See Fed. R. Bankr. P. 7001(9). The same is true as to Bank of America's request for declaratory relief as to the automatic stay. See also 11 U.S.C. § 362(j) (limiting declaratory relief with respect to the automatic stay to relief granted under 11 U.S.C. § 362(c), which is not implicated here).

Turning to the merits of the motion, as to the value of the estate's 50% interest in Greco Partners, Greco owns 50% interest in three real properties and owns fractional interest in Car Cage Motors, Inc., a used car sales business. The trustee estimates "Greco Partners' 50% share of the equity" in the real properties to be approximately $240,500. But, the estate's interest in Greco Partners is only 50% and the trustee would recover the equity in the real properties only upon a distribution of the estate's membership interest in Greco Partners. As the estate does not own the properties directly, but owns them through Greco Partners, and Greco Partners owns only 50% interest in the properties, liquidating the equity would require transactional costs and delay that the estate would not have to incur by selling its interest in Greco Partners via this motion. The trustee is also concerned about unanticipated tax and accounting expenses the estate may incur if the real properties are liquidated and the estate's membership interest is distributed.

As to Car Cage Motors, while it appears to be a viable business, with retained earnings and shareholder equity, it is a closely held corporation in which the estate's 50% interest in Greco Partners appears to own only 36% interest. Amended Schedule B says that the debtors own only 36% interest in Car Cage Motors. Docket 25. The estate's interest in Car Cage Motors seems to be owned via the 50% interest in Greco Partners. As Greco Partners' fractional interest in Car Cage Motors is not owned solely by the estate - the estate's interest in Greco Partners is only 50% - liquidating Greco Partners' interest in Car Cage Motors may require considerable transactional expense, delay, and other unanticipated expenses, such as tax liabilities. Also, the market for the fractional interest in Car Cage Motors is likely limited because CCM seems to be a closely held corporation.

In light of the above, selling the estate's fractional interest in Greco Partners via this motion, rather than attempting to sell the assets owned by Greco Partners individually, is in the best interest of the estate and the creditors.

Nevertheless, the motion will be denied. First, as mentioned earlier, the evidence supporting the 12% breakup fee was not with the motion. It was filed with the reply, depriving parties in interest from responding to the evidence.

Second, the motion is not clear about net benefit from this transaction to the estate. For instance, the motion does not disclose what tax consequences, if any, will befall the estate from the sale of the real properties and the partnership interest. The motion also does not identify the transactional costs, if any, the estate will be incurring from this sale.

Finally, the motion does not allocate a purchase price to each of the assets being sold. While the trustee may consider this to be a benefit to the estate, the court cannot tell from the motion that the sale of the Citrus Heights and Granite Bay properties, for instance, benefits the estate. The motion does not say that the estate would not have to pay taxes for the sale of these properties and does not say that any part of the purchase price has been allocated to these properties. In other words, abandonment of the properties may prove to be of a greater benefit to the estate than their sale. The motion will be denied without prejudice.

9.	13-35475-A-7 TOG-12	JOSE JIMENEZ AND MARIA GONZALEZ	MOTION TO CONVERT CASE 6-5-14 [126]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to convert their case to chapter 13.

The chapter 7 trustee opposes conversion.

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

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The motion will be denied. First, the motion states that the debtors have sufficient regular income to make $669 in chapter 13 plan payments, but this is not supported by the record. To make those payments, the debtors are adding $500 in monthly income from their 20-year old son, Miguel Gonzales, who has signed a declaration stating that he works average of 30 hours a week, has been working at Calvintage Roofing since March 18, 2014, and is willing to commit $500 a month toward the debtors' plan payments, for five years. Docket 131.

However, there is no evidence from Miguel Gonzales that he is able to afford this contribution. Yes, he works and obviously receives salary from his employer, but his declaration states nothing about the amount of his salary or his monthly expenses.

Second, even assuming Miguel Gonzales is willing and able to assist the debtors with $500 a month for five years, the motion is not clear about the source of the remaining $169 a month in plan payments. The court made findings and conclusions in its ruling on the debtors' prior conversion motion that have not been addressed in this motion.

In its ruling denying their prior conversion motion, the court stated:

"In this case, in spite of the amendments to Schedules I and J, the court is not convinced that the debtors have any disposable income to confirm a chapter 13 plan. The court is not convinced that Mr. Jimenez's income as stated in Amended Schedule I is correct. Amended Schedule I states that his monthly income is $3,569 and does not account for any payroll deductions.

On the other hand, the trustee has produced Mr. Jimenez's pay advice from November 2013, covering the last week of that month, listing a net income for that week of only $458.76. Docket 113. In other words, even assuming Mr. Jimenez is able to work 52 weeks a year, his net monthly income is far less than $3,569. His monthly income averages $1,987.96 ($458.76 x 52 weeks)/12 months).

Further assuming that Mrs. Gonzalez's income is as stated in Amended Schedule I, $841 - which is difficult for the court to accept as no payroll deductions are listed for her either - their total monthly income would be only $2,828.96, less than their reduced expenses of $2,886 listed in Amended Schedule J. Docket 82."

Docket 119 at 2.

The instant motion does not address the court's conclusion in Docket 119 that the debtors do not have any disposable income to fund a plan, given that their monthly net income is at best only $2,828.96, while their reduced expenses are $2,886. Specifically, the motion does not say anything about Debtor Jose Jimenez's monthly income.

The debtors have said nothing about the fact that their disposable income is a negative $57.04.

And, even with Miguel Gonzales' $500 of monthly income, the debtors have only $442.96 in disposable income to fund their $669 a month plan.

Third, the motion says that the debtors will be paying only $6,000 in chapter 7 administrative expenses via their chapter 13 plan. But, the motion does not say how the debtors arrived at that figure.

On the other hand, the trustee's declaration in support of the opposition states that chapter 7 administrative expenses exceed $15,000 already. Docket 134 at 3. This means that even at $669 a month, the proposed plan payments will not be sufficient to pay all claims in full, as contemplated by the plan.

In short, the debtors have not met their burden of persuasion to establish eligibility for chapter 13 relief, namely, that they have any disposable income

to fund a chapter 13 plan.

Lastly, the request for conversion is made in bad faith.

Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present."

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold v. Gill (In re Arnold), 252 B.R. 778, 786 (B.A.P. 9th Cir. 2000).

The concealment of assets, though, is sufficient to constitute bad faith. Arnold at 785-86; Rolland at 415.

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

Initially, the debtors have not produced their 2013 tax return to the trustee yet, despite requests from the trustee. This alone is sufficient to warrant a finding of bad faith. The debtors' obligation to produce their tax return is not done away with just because the debtors are seeking conversion to chapter 13. The debtors are required to fulfill all their obligations as debtors in a chapter 7 bankruptcy case, until an order converting the case to chapter 13 is entered.

Further, the debtors continue to rely on their Amended Schedule I to substantiate their claim that they have sufficient income to fund a chapter 13 plan, even though the court noted in its ruling on the prior conversion motion that Mr. Jiminez's income in Amended Schedule I is inaccurate. The court ruled in its ruling on the prior conversion motion that:

"The court is not convinced that Mr. Jimenez's income as stated in Amended Schedule I is correct. Amended Schedule I states that his monthly income is $3,569 and does not account for any payroll deductions.

On the other hand, the trustee has produced Mr. Jimenez's pay advice from November 2013, covering the last week of that month, listing a net income for that week of only $458.76. Docket 113. In other words, even assuming Mr. Jimenez is able to work 52 weeks a year, his net monthly income is far less than $3,569. His monthly income averages $1,987.96 ($458.76 x 52 weeks)/12 months)."

Docket 119 at 2.

The instant motion makes no effort to explain or reconcile the lack of payroll deductions in the Amended Schedule I. Nor have the debtors amended their

Schedule I since the court issued the ruling denying the prior conversion motion.

Hence, the debtors are continuing to misrepresent Mr. Jiminez's net monthly income to the court, in an effort to qualify the debtors for chapter 13 relief. Along with the fact that this is the debtors' third conversion motion since February 18, 2014, the court concludes that the debtors' request for conversion is made in bad faith. This is yet another reason to deny conversion to chapter 13. The motion will be denied.

As a final note, the motion states that when the debtors filed this case, they did not realize that they had substantial equity in their residence. This case was filed on December 6, 2013.

While the debtors may not have realized how much equity they had in their home on the petition date, their counsel should have realized it, especially when he was making the decision to advise them to file this chapter 7 petition. As of the petition date, it had been common knowledge for over six months that property values in Sacramento have been increasing dramatically. The debtors' home is located in Sacramento, California, on Azevedo Drive.

10. 14-25976-A-7 MARK/DEBORAH HIGHLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-1 — 7-8-14 [9]
ACM NORTHWEST V L.L.C. VS.

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

The movant, ACM Northwest V, L.L.C., seeks both retroactive and prospective relief from the automatic stay with respect to a 2012 Jazz 315RE fifth wheel trailer vehicle. The sought retroactive relief is with respect to the debtors' voluntary surrender of the vehicle to the movant post-petition. The movant contends that it was not aware of the bankruptcy filing at the time of the surrender.

The debtors filed this case on June 4, 2014 and then voluntarily surrendered the vehicle to the movant on June 10, 2014, consistent with their intention of surrender stated in the statement of intention. Because the debtors voluntarily surrendered the vehicle to the movant, retroactive relief from stay as to the debtors will be denied as unnecessary. 11 U.S.C. § 362(a) does not prevent the debtors from voluntarily surrendering property post-petition.

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

On the other hand, retroactive relief from stay will be granted as to the estate.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The movant did not know about the bankruptcy filing when the debtors surrendered the vehicle. Docket 13 ¶ 12. Also, the court could have granted relief from stay had the movant applied for such relief before taking possession of the vehicle.

As of the petition date, the vehicle had a value of $33,000 and its secured claim was approximately $35,400. Schedules B & D.

Thus, as of the petition date, there was no equity in the vehicle and no evidence exists that it was necessary to a reorganization or that the trustee could administer it for the benefit of the creditors. The court then could have granted relief from stay to the movant under 11 U.S.C. § 362(d)(2).

Hence, the court will grant retroactive relief from stay to the movant, with respect to the estate, as of June 10, 2014, when the movant took possession of the vehicle.

With respect to prospective relief from stay, as already mentioned, 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 July 30, 2014.

Accordingly, prospective relief will be granted as to the debtors and the estate 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. 14-24590-A-7 FRANCISCO/DORA MAYORGA — MOTION TO EMPLOY REALTOR
PA-2 — 7-22-14 [22]

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

The motion will be granted.

The trustee requests approval to employ Katzakian Real Estate as a real estate broker for the estate. Katzakian will assist the estate with the listing,

marketing and sale of real property in Elk Grove, California. The proposed compensation for Katzakian will be the typical six percent (6%) commission of the gross sales price.

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

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

12. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
RAS-1
VS. CAPITAL ONE BANK AND COUNTY OF SAN JOAQUIN
6-20-14 [14]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $4,381.24 on October 25, 2013. The abstract of judgment was recorded with San Joaquin County on November 25, 2013. That lien attached to the debtor's residential real property in Tracy, California.

A judgment was entered against the debtor in favor of County of San Joaquin for the sum of $10,398.56 on October 3, 2013. The abstract of judgment was recorded with San Joaquin County on November 27, 2013. That lien attached to the debtor's residential real property in Tracy, California.

The motion to avoid these judicial liens will be denied. The motion's evidence of value for the subject property is a declaration from the debtor stating that the value of the property as of the petition was $131,000, "based upon my knowledge/research of real property values for similar properties in the vicinity of the Property and by reviewing the valuation posted on Zillow.com at the time of the filing." Docket 16 at 2. This evidence of value is inadmissible hearsay and inadmissible expert evidence because the debtor is basing her opinion on research and on what zillow.com says about the value of the property. It is inadmissible hearsay because the debtor is repeating out-of-court statements of third parties about the value of the property. Fed. R. Evid. 802.

More, the debtor has not been qualified as an expert witness to render an opinion of value under Fed. R. Evid. 702 as an expert witness. As an owner of the property, the debtor may merely give an opinion based on her personal familiarity with the property, but she is not allowed to testify concerning her research and what others have told her concerning the value of comparable properties. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). Hence, the debtor cannot give an opinion of value based on anything other than the fact that she owns the property. See Fed. R. Evid. 701(c) (prohibiting lay witnesses from testifying in the form of an opinion based on "scientific, technical, or other specialized knowledge"). As the court does not have admissible evidence of value for the property, the motion will be denied.

THE FINAL RULINGS BEGIN HERE

13. 11-49912-A-7 GINA FLAHARTY — MOTION TO COMPROMISE CONTROVERSY
DNL-10 — 7-11-14 [149]

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 Matthew Pearson and Pearson & Pearson, A.P.C. (the Pearson defendants), resolving the estate's and Travel Med, Inc.'s legal malpractice claims against the Pearson defendants.

The debtor is the sole equity holder of Travel Med, a nursing corporation that is no longer operating. The malpractice claims arose from Pearson's representation of the debtor and Travel Med in a franchise litigation brought by Passport Health, Inc. Both the debtor and Travel Med were sued by Passport, resulting in a large judgment against both the debtor and Travel Med. Passport is a judgment creditor of both the debtor and Travel Med, holding a $635,593.70 judgment (post-judgment interest included) against both the debtor and Travel Med, with $157,110.18 of the judgment is for trademark infringement only against Travel Med.

The trustee and Travel Med entered into a settlement agreement, previously approved by this court, giving the trustee authority to manage and control the prosecution of the malpractice claims on behalf of both the estate and Travel Med, and providing for the division of any recovery on the malpractice claims between the estate and Travel Med.

Under that agreement: proceeds from the malpractice litigation are to be divided equally between the estate and Travel Med; Travel Med's 50% share is to be distributed by the trustee as follows: 5% to the debtor on account of a management fee owed by Travel Med and 95% to Travel Med's creditors until their claims are paid in full, with the balance, if any, to be returned to the trustee as a "return of capital."

The total damages in the malpractice litigation, asserted by the trustee and Travel Med, were in excess of $800,000.

Under the terms of the instant compromise, the Pearsons' insurer will pay $550,000 in full satisfaction of the malpractice claims. In exchange, the trustee and Travel Med will dismiss the malpractice claims. In addition, the trustee will discharge and hold the Pearson defendants harmless as to any liens asserted against the malpractice claim proceeds by Passport and legal professionals who have provided services on account of the claims. Passport is the only person that asserts a lien against the proceeds. The parties will

exchange mutual releases.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the damages sought in the malpractice claims are in excess of $800,000, given that the claims are fact intensive, given that the settlement amount represents over 60% of the claimed damages, given that the Pearson defendants' $1 million insurance policy is diminishing as attorney's fees and costs increase, given the anticipated costs - especially for expert witnesses, and given the inherent risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

14. 11-49912-A-7 GINA FLAHARTY — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
DNL-11 — 7-11-14 [159]

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.

Steven Lewis, special counsel for the estate, and formerly with Lewis & Bacon, has filed his first and final motion for approval of compensation. The requested compensation consists of $217,694.16 in fees and $5,764.59 in expenses, for a total of $223,458.75.

The compensation relates solely to services provided in a legal malpractice litigation brought by the trustee against the debtor's former counsel in a franchise litigation that resulted in a $635,593 judgment (post-judgment interest included) against the debtor and her wholly owned corporation, Travel Med, Inc.

The movant's services were provided between January 29, 2012 and July 11, 2014. The requested compensation is based on two compensation arrangements, one approved on January 25, 2012, in connection with the movant's employment to evaluate the malpractice claims, and the other approved on May 9, 2013 in connection with the movant's employment to prosecute the claims.

The initial employment of the movant was on an hourly fee basis, capped at $5,000; the latter employment of the movant was on a contingency fee basis, as follows: 33.3% of the total net recovery received through settlement before the filing of a responsive pleading by the defendants, 40% of the total net recovery received after any of the defendants have filed a responsive pleading.

Even though Travel Med's malpractice claims were initially filed and prosecuted by different counsel, Smith, McDowell & Powell, on March 29, 2013 the trustee amended the movant's employment agreement to allow the movant to prosecute the claims of Travel Med as well.

The defendants in the malpractice litigation had filed an answer to the estate's complaint, at the time settlement was reached by the parties. The defendants agreed to pay $550,000 in full satisfaction of the malpractice claims. After subtracting the movant's $5,764.59 in advanced expenses, 40% of the settlement amount totals $217,694.16, leaving a total compensation of $223,458.75.

To facilitate the settlement, the movant has agreed to pay the compensation of Smith, McDowell & Powell from the compensation sought in this motion, for work done prior to the movant's involvement in the Travel Med action. The compensation to Smith, McDowell & Powell will total $1,962.16, representing $1,720 in fees and $242.16 in interest.

In addition, the movant will be allocating a portion of the sought compensation to the partners of Lewis & Bacon, the movant's former law firm, for work done prior to the dissolution of that law firm, sometime in early 2013. The compensation to Lewis & Bacon will total $58,500.33, representing $57,169 in fees and $1,331.33 in costs.

This leaves the movant with compensation totaling $162,996.26, representing $158,563 in fees and $4,433.26 in costs, for work done after the dissolution of Lewis & Bacon.

The foregoing does not increase the compensation the estate is contractually obligated to pay to the movant. The movant has agreed to waive his fees - but not costs - incurred in connection with his initial employment by the estate, resulting in a gain to the estate.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services consisted, without limitation, of: reviewing the entirety of the franchise litigation, including docket, case files, motion for summary judgment, trial briefs, and other pleadings and filings; reviewing trial transcripts; reviewing communications between the debtor and the defendants; reviewing other documents provided by the debtor; preparing chronology and summary of the events and issues in the franchise case; preparing an evaluation of the malpractice claims; conducting legal research; preparing and filing the estate's complaint; preparing case management statements; appearing at

conferences; reviewing discovery requests from the defendants; preparing responses to the discovery requests; preparing a motion to consolidate the estate's and Travel Med's malpractice actions; appearing at the hearing on that motion; preparing settlement demand; preparing mediation brief; preparing for and attending mediation; researching California 998 offers; preparing the 998 offer; preparing for and attending the debtor's and the principal defendant's depositions; negotiating a settlement with the defendants; preparing settlement agreement that resolves the two malpractice actions; communicating extensively with the trustee, the trustee's bankruptcy counsel, and the defendants' counsel.

The movant spent 423.2 hours on the above-described services.

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.

15. 11-49912-A-7 GINA FLAHARTY — MOTION TO COMPROMISE CONTROVERSY
DNL-12 — 7-11-14 [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 among the estate, Travel Med, Inc., and Passport Health, Inc., resolving Passport's money judgment against the debtor and Travel Med.

The debtor is the sole equity holder of Travel Med, a nursing corporation that is no longer operating. Both the debtor and Travel Med were sued by Passport, resulting in a large judgment against both the debtor and Travel Med. Passport is a judgment creditor of both the debtor and Travel Med, holding a $635,593.70 judgment (post-judgment interest included) against both the debtor and Travel Med, except that $157,110.18 of the judgment is for trademark infringement only against Travel Med.

The trustee and Travel Med entered into a settlement agreement, previously approved by this court, giving the trustee authority to manage and control the prosecution of malpractice claims on behalf of both the estate and Travel Med against Matthew Pearson and Pearson & Pearson, A.P.C., the attorney who represented the debtor and Travel Med in the franchise litigation with Passport. The settlement with Travel Med also provided how recovery from the malpractice claims would be divided between the estate and Travel Med.

Under that agreement: proceeds from the malpractice litigation are to be divided equally between the estate and Travel Med; Travel Med's 50% share is to be distributed by the trustee as follows: 5% to the debtor on account of a

management fee owed by Travel Med and 95% to Travel Med's creditors until their claims are paid in full, with the balance, if any, to be returned to the trustee as a "return of capital."

In a related motion that was set for hearing on this calendar (DCN DNL-10), the trustee is seeking the approval of a settlement agreement between the estate and the Pearson defendants, resolving the estate's and Travel Med's malpractice claims. The proceeds to be paid by the Pearson defendants under that settlement are $550,000, in full satisfaction of the malpractice claims. The court is granting approval of that settlement. The estate and Travel Med will share equally in those proceeds.

Although Passport has asserted a judgment lien against the malpractice claim proceeds, the trustee and Travel Med dispute the lien. As to the estate, the lien is avoidable under 11 U.S.C. § 547 because state law does not allow for the attachment of proceeds from malpractice claims, the lien is unperfected. and liens on malpractice claims are against public policy.

Under the terms of the instant compromise:

- After payment of the estate's and Travel Med's special counsel's fees and costs, Travel Med's interest in the settlement proceeds will be allocated as follows: 5% to the debtor on account of the management fee and 95% to Passport in full satisfaction of its judgment against both the debtor and Travel Med;

- Passport's claim against the estate will be allowed as a general unsecured claim for Passport's proof of claim amount of $635,593.70 minus the sum received by Passport on account of Travel Med's interest in the malpractice settlement proceeds;

- Travel Med's creditors, excluding Passport, will be given a 60-day notice and opportunity to assert claims against the debtor's bankruptcy estate in the form of a proof of claim;

- The debtor's bankruptcy estate will pay as an administrative expense claim the costs associated with the preparation and filing of Travel Med's tax returns and the dissolution of Travel Med;

- The estate and Travel Med, on one hand, and Passport, on the other, will exchange mutual releases.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given:

- that Passport's lien on the malpractice settlement proceeds would consume all such proceeds,

- that the settlement frees the estate's interest in the malpractice settlement proceeds from Passport's lien,

- that Passport's judgment against the debtor and Travel Med will be satisfied solely by Travel Med's share in the malpractice settlement proceeds,

- that the estate's general unsecured creditors, other than Passport, will receive a distribution from the debtor's estate,

- that Passport will hold 87% of the general unsecured claims against the estate upon implementation of this settlement,

- the global nature of this settlement, along with the settlement with the Pearson defendants, and

- the inherent costs, risks, delay and inconvenience of further litigation,

the settlement is equitable and fair.

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

16. 14-25218-A-7 SUSAN BELL
APN-1
SANTANDER CONSUMER USA INC., VS.
MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-1-14 [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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2011 Nissan Versa. The movant has produced evidence that the vehicle has a value of $11,125 ($9,074 in Schedule B) and its secured claim is approximately $14,293.

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 25, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

claim. No other relief is awarded.

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

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

17. 14-22640-A-7 DONNA VANDERHORST — MOTION TO AVOID JUDICIAL LIEN
RJ-1
VS. FAIRLANE CREDIT, L.L.C. — 7-8-14 [20]

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 Fairlane Credit, L.L.C. for the sum of $19,581.85 on September 4, 2007. The abstract of judgment was recorded with Sacramento County on January 21, 2010. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of $150,000 as of the date of the petition. Docket 14. The unavoidable liens total $128,000 on that same date, consisting of a single mortgage in favor of Ocwen Federal Bank. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Amended Schedule C. Docket 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).

18. 13-23544-A-7 MICHAEL/ULANDA WILLIAMS — MOTION TO COMPROMISE CONTROVERSY
SSA-3 — 7-2-14 [28]

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 the debtor, resolving the estate's interest in the non-exempt equity of the debtor's residence in Stockton, California. The agreement will allow the debtor to keep his residence, while the estate will receive $30,000 in exchange.

The settlement proceeds will be sufficient to pay all estate claims in full. The unsecured claims total $22,205.55.

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 inherent costs, risks, delay and inconvenience of further litigation, and that the settlement proceeds will pay all estate claims in full, 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.

19. 13-35044-A-7 RAMONA REESE
SW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-24-14 [16]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect

to a 2006 Chevrolet Impala vehicle.

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

The petition here was filed on November 26, 2013 and a meeting of creditors was first convened on December 30, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 26. The debtor filed a statement of intention on the petition date, but did not list the vehicle in that statement.

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

Here, although the debtor filed a statement of intention on the petition date, the vehicle is not listed in that statement. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 26, 2013, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on December 26, 2013.

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

20. 14-20061-A-7 ANNE MAHONY
DNL-2

MOTION TO
APPROVE COMPROMISE
7-11-14 [20]

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 Martha Hudson, the debtor's daughter, resolving the estate's interest in the non-exempt portion of a $40,000 loan the debtor made to Ms. Hudson. The debtor exempted $22,000 in the loan proceeds.

Under the terms of the compromise, Ms. Hudson will pay $9,000 to the estate in full satisfaction of the estate's interest in the $18,000 non-exempt portion of the loan proceeds.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake, given that Ms. Hudson does not have significant assets that could be used to pay the loan, given that Ms. Hudson is borrowing to make the $9,000 payment to the estate, 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.

21. 14-26277-A-7 LAWRENCE/SABRINA PORCHIA
SW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-21-14 [9]

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

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2003 Nissan Altima vehicle.

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

The petition here was filed on June 13, 2014 and a meeting of creditors was first convened on July 22, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 13. The debtor filed a statement of intention on the petition date, but did not list the vehicle in that statement.

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

Here, although the debtor filed a statement of intention on the petition date, the vehicle is not listed in that statement. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 13, 2014, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on July 22, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on

July 13, 2014.

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

22. 14-20583-A-7 LARRY JENT — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 7-2-14 [110]
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.

The movant, U.S. Bank, seeks relief from the automatic stay as to real property in Goleta, California. The movant has produced evidence that the property has a value of $325,000 and it is encumbered by claims totaling approximately $506,095. Docket 114, Ex. 5. The movant's deed is in first priority position and secures a claim of approximately $434,469.

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 non-opposition to this motion.

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

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

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

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

23. 14-21194-A-7 CRISTINA DUNCA — MOTION TO AVOID JUDICIAL LIEN
OAG-4 — 7-2-14 [35]
VS. CAPITAL ONE BANK

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 $13,337.97 on October 31, 2012. The abstract of judgment was recorded with Sacramento County in or about October 2013. That lien attached to the debtor's residential real property in Orangevale, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of $295,000 as of the date of the petition. Docket 16. The unavoidable liens total $295,313 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 18.

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

24. 14-22097-A-7 JUSTIN ELLIOTT — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 7-11-14 [42]
RESIDENTIAL CREDIT SOLUTIONS, INC. VS.

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

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

The movant, Residential Credit Solutions, seeks relief from the automatic stay as to real property in Elk Grove, California.

Given the entry of the debtor's discharge on June 9, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $119,193 and it is encumbered by claims totaling approximately $206,849. The movant's deed is in first priority position and secures a claim of approximately $172,677.

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

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

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

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

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