UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 31, 2015 at 10:00 a.m.

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

1, 4, 5, 6, 8, 13, 15

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 SEPTEMBER 28, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 14, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 21, 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. 15-26214-A-7 SHARON WILSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
FWK-1
OLYMPIA MORTGAGE FUND L.L.C. VS. — 8-17-15 [9]

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, Olympia Mortgage Fund L.L.C., seeks relief from the automatic stay as to a real property in Camptonville, California. The property has a value of $85,000 and it is encumbered by claims totaling approximately $97,453. The movant's deed is the only deed against the property and secures a claim of approximately $96,709.

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.

2. 12-40820-A-7 DANNIKA BARNETT
SLC-2

MOTION TO APPROVE COMPENSATION OF AUCTIONEER
7-22-15 [123]

Tentative Ruling: The motion will be denied without prejudice.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $636 in fees and $315 in expenses, for a total of $951. This motion is for a sale completed on July 9, 2015. The court approved the movant's employment as the trustee's auctioneer on June 1, 2015. The requested compensation is based on a 12% commission and reimbursement of unspecified expenses.

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 the sale of a 2001 Lexus GS vehicle.

While the court concludes that the commission fee is for actual and necessary services rendered in the administration of this estate, the court cannot tell what the requested expenses encompass. The motion papers do not contain a breakdown and explanation of the $315 in expenses expended by West. The court then cannot grant the motion.

3. 14-30320-A-7 PETER WOLK
DLO-3

MOTION TO SELL
7-23-15 [93]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $80,000 the estate's unencumbered interest in Northstate Medical Center Associates, L.L.C. (28.9485%), Amanda Place Investors Limited Partnership (0.5155%) and The Courtyard at Little Chico Creek, L.L.C. (1%), to the debtor.

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

The motion will be denied because it is not supported by evidence, establishing its factual assertions. There is no supporting declaration with the motion. For instance, the motion states that "The trustee has investigated the assets of the estate and believes that the price offered for the above mentioned assets is reasonable and fairly represents the value of such assets." Docket 93 at 2.

More, the court needs some foundation for the trustee's conclusion that $80,000 represents a fair and reasonable value for assets with a scheduled value of approximately $194,620. According to the motion, the scheduled value for the assets being sold totals $194,620: Northstate Medical Center Associates, L.L.C. ($150,000), Amanda Place Investors Limited Partnership ($20,620) and The Courtyard at Little Chico Creek, L.L.C. ($24,000). See Fed. R. Evid. 702(b)-(d) & 703.

Further, the motion states nothing about the trustee's efforts to market the assets, assuming they are marketable. The motion also does not say whether the sale is subject to overbids and, if not, why not.

4. 12-36729-A-7 MICHAEL/NAOMI ALFORD — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
DNL-13 — 8-10-15 [149]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's accountant, 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 $3,417 in fees and $5.80 in expenses, for a total of $3,422.80. This motion covers the period from February 7, 2014 through February 19, 2015. The court approved the movant's employment as the estate's accountant on February 20, 2014. In performing its services, the movant charged hourly rates of $195, $200, $325 and $330.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included preparing an income tax filing extension, reviewing documents provided by the trustee, analyzing tax consequences from the sale of various assets, updating 505(b) letters, preparing an estate tax return, and communicating with the trustee about tax-related issues.

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

5. 12-36729-A-7 MICHAEL/NAOMI ALFORD — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-14 — 8-10-15 [155]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's attorney, 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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $44,954.50 in fees and $2,294.56 in expenses, for a total of $47,249.06. This motion covers the period from October 22, 2012 through August 6, 2015. The court approved the movant's employment as the trustee's attorney on November 7, 2012. In performing its services, the movant charged hourly rates of $50, $75, $150, $175, $195, $225, $275, $375 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents and advising the trustee about the administration of the estate, (2) assisting the estate with the sale of many real properties, (3) negotiating with a secured creditor for a carve-out from the sale of its collateral, (4) investigating and recovering rents collected by the debtors post-petition, (5) seeking court authority to manage rental property, (6) negotiating the release of a secured claim, (7) seeking extension of the deadline for objections to the debtors' discharge, (8) assisting the estate with the sale of much personal property, including trailers and vehicles, (9) propounding discovery from the debtors for an accounting of the debtors' 2006 $10 million inheritance, and (10) 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.

6. 14-20431-A-7 JENNIFER MILLS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-8 — 8-10-15 [80]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's attorney, 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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $16,725.50 in fees and $141.62 in expenses, for a total of $16,867.12. This motion covers the period from February 10, 2014 through August 7, 2015. The court approved the movant's employment as the trustee's attorney on February 21, 2014. In performing its services, the movant charged hourly rates of $150, $175, $195, $275 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents and advising the trustee about the administration of the estate, (2) assisting the estate with the sale of a real property, a vehicle, and interest in realty commissions and earnings based on pre-petition services; (3) assisting the estate with the sale of an interest in an oil and gas production corporation, (4) assessing the debtor's exemptions and amended exemptions in estate assets, and (5) 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.

7. 09-43132-A-7 TSAR — MOTION TO PAY
CDH-10 — 8-1-15 [205]

Tentative Ruling: The motion will be granted in part.

The trustee seeks to pay post-petition estate income taxes to the California Franchise Tax Board in the amount of $3,384.

11 U.S.C. § 503(b)(1)(B) provides: "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 October 25, 2009. The tax liability in question was incurred for years 2008 through 2015:

2008 ($65 for delinquent fiscal year 2008 California Form 199, including fees and penalties), 2009 ($25 California Form 199 fees), 2010 ($25 California Form 199 fees), 2011 ($10 California Form 199 fees), 2012 ($10 California Form 199 fees), 2012 ($825 California Form 100 minimum tax plus interest), 2013 ($824 California Form 100 minimum tax plus interest), 2014 ($800 California Form 100 minimum tax plus interest) and 2015 ($800 California Form 100 minimum tax plus interest).

As the tax liability for years 2009 through 2015 were clearly incurred post-petition, the court will allow their payment as an administrative expense claim under section 503(b)(1)(B).

But, the 2008 tax liability appears to have been incurred pre-petition. It was for a delinquency in the filing of Form 199, which was due pre-petition, on May 15, 2009, whereas this case was not filed until October 25, 2009.

And, the motion states nothing about whether the 2008 $65 liability is somehow prorated to encompass fees and penalties only from October 25, 2009 until Form 199 was actually filed (prior to December 15, 2009, the final deadline of the extension).

The court cannot conclude that the year 2008 delinquency tax liability was

incurred post-petition and is thus payable under section 503(b)(1)(B). The motion will be granted in part.

8. 08-20134-A-7 HENRY/DIANA AMOS — MOTION TO AVOID JUDICIAL LIEN
CAH-3
VS. PATTERSON FAMILY TRUST ETC. — 8-5-15 [39]

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

The motion will be granted.

A judgment was entered against Debtor Henry Amos in favor of Patterson Family Trust Dated July 7, 1988 for the sum of $367,447.92 on December 10, 2007. The abstract of judgment was recorded with Sacramento County on December 13, 2007. That lien attached to the debtor's residential real property in Folsom, 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 $540,000 as of the petition date. Dockets 41 & 1. The unavoidable liens totaled $686,826.07 on that same date, consisting of a first mortgage for $384,448.76 in favor of Bank of America and a second mortgage for $302,377.31 in favor of Bank of America . Dockets 41 & 42. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Dockets 41 & 42.

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. 15-25040-A-7 JOSE OSORTO — MOTION TO DISMISS CASE
AFL-1 — 8-10-15 [25]

Tentative Ruling: The motion will be denied.

The debtor seeks dismissal because he failed to obtain pre-petition credit counseling, as required by 11 U.S.C. § 109(h)(1), thus making him ineligible for chapter 7 relief.

The U.S. Trustee opposes the motion, contending that the pre-petition counseling requirement under esction 109(h)(1) is not jurisdictional and it can be waived.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this

chapter only after notice and a hearing and only for cause."

The court agrees with the U.S. Trustee. By filing this petition without taking the required pre-petition counseling, the debtor waived the right to assert a section 109(h)(1) defect in his eligibility for bankruptcy relief. Mendez v. Salven (In re Mendez), 367 B.R. 109, 116-18 (B.A.P. 9th Cir. 2007). The debtor then has not established cause for dismissal. The motion will be denied.

10. 15-24246-A-7 TRACIE RIGGS — MOTION TO DISMISS CASE 7-30-15 [37]
JEB-1

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

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on July 28, 2015.

The debtor opposes the motion, contending that she has had to move three times in the last 90 days and that she did not receive notices from the court because the motor home park, where she lived on the petition date, trashed her mail.

The motion will be granted. It is the debtor's responsibility to update her mailing address with the court. The court mails notices to the debtor based on her representation of where she receives mail. The court is not responsible for the debtor's nonreceipt of notices from the court.

Moreover, the debtor has failed to attend the meeting of creditors twice. She failed to attend the initial meeting on June 30, 2015 and then she failed to attending the continued July 28 meeting.

The case is now over three months old; it was filed on May 27, 2015. Yet, the trustee has not had the opportunity to examine the debtor even once. As such, the estate and the creditors have been prejudiced. This is especially so given that the deadline for filing complaints concerning the debtor's discharge is August 31, 2015, the date this motion will be heard.

The debtor's failure to appear at two meetings has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

11. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-28-15 [71]
EAT-1
WELLS FARGO BANK, N.A. VS.

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

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

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

As to the estate, the analysis is different. The movant asserts that the property has a value of $407,612 and it is encumbered by claims totaling

approximately $630,954. The movant's deed is the only encumbrance against the property.

However, the motion will be denied as to the estate because the movant's valuation is based on the debtor's statement of value for the property in the schedules. Docket 74 at 4; Docket 71 at 3; Docket 1, Schedule A. Although the debtor's statement of value may be binding and admissible as evidence against the debtor under Fed. R. Evid. 801(d)(2)(A), it is not admissible evidence as to the estate. As such, the movant has not met its burden of proof on the value of the property as to the estate. See 11 U.S.C. § 362(g)(1) (providing that the movant has the burden of proof on the issue of equity). Accordingly, the motion will be denied as to the estate. The court finds it unnecessary to address the other issues raised by the opposition.

12. 15-22750-A-7 JOSE CHAVEZ — MOTION TO COMPROMISE
HSM-3 — 8-7-15 [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 offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor, resolving the debtor's interest in a real property in Sacramento, California and resolving the trustee's objection to the debtor's exemption in the property. The trustee asks that the transaction be approved also as a sale.

The debtor scheduled a 50% interest in the property, with the other 50% owned by his disabled sister. The value of the debtor's 50% interest in the property is scheduled at $79,000, while the value of the entire property is scheduled at $158,000. The debtor claimed a $75,000 exemption in the property under Cal. Civ. Proc. Code § 704.730. The debtor claims that the entire property is owned by his sister, but he was placed on title because his sister is disabled. There are no encumbrances against the property.

The trustee has challenged the debtor's exemption claim as the available evidence about him residing on the property as of the petition date is inconclusive.

Under the terms of the compromise, the debtor will pay $13,000 to the estate, resolving the estate's interest in the property and resolving the trustee's exemption objection.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A &

C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the debtor's contention that his sister owns the entire property, given that the evidence of the debtor residing at the property as of the petition date is "mixed," requiring further discovery, 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 compromise will be approved.

The transaction will be approved also as a sale. 11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Such sale is in the best interest of the estate and the creditors, given the reasons for approval of the compromise. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b).

13. 15-24457-A-7 VERA GOPA — MOTION TO CONVERT CASE TO CHAPTER 13
MS-2 — 8-5-15 [35]

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 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 debtor requests conversion from chapter 7 to chapter 13.

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

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

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

The debtor has $200 in regular monthly net income. Docket 16, Schedule J. The income appears to be regular as it is generated by the debtor's employment as a care provider, a job she has held for 11 years, and by the non-filing spouse's employment as a machinist, a job he has held for approximately one and one half years.

And, the debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $131,148.10) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $200,770.09). Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

14. 15-24657-A-7 DAN KEITGES — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
U.S. BANK TRUST, N.A. VS. — 7-22-15 [14]

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

The movant, U.S. Bank Trust, seeks relief from the automatic stay as to a real property in El Dorado Hills, California.

With respect to the debtor, the property has a value of $475,000 and it is encumbered by claims totaling approximately $472,294. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is the only deed against the property and secures a claim of approximately $467,168. This leaves approximately $2,706 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 $7,832. 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 September 8, 2015. The trustee filed a report of no distribution on July 9, 2015 and there is nothing in the file suggesting that the case will remain open a significant period beyond September 8, 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 July 9, 2015. The trustee has also filed a nonopposition to the motion. 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.

15. 15-24258-A-7 JOHN/HEATHER COWLING — MOTION FOR RELIEF FROM AUTOMATIC STAY
PHL-1
SCOTT VALLEY BANK VS. — 8-11-15 [18]

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, Scott Valley Bank, seeks relief from the automatic stay as to a real property in Montague, California. The movant has produced evidence that the property has a value of $95,000 and it is encumbered by claims totaling approximately $209,254. Docket 20. The movant's deed is in first priority position and secures a claim of approximately $104,728.

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.

16. 14-27474-A-7 BRENT/ANGELINA WARD — MOTION TO AVOID JUDICIAL LIEN
GMW-3 — 7-15-15 [47]
VS. CAVALRY SPV I L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Brent Ward in favor of Cavalry SPV I, L.L.C. for the sum of $8,766.20 on August 12, 2013. The abstract of judgment was recorded with San Joaquin County on September 30, 2013. That lien attached to the debtor's residential real property in Manteca, California. The debtor seeks avoidance of the lien.

The motion will be denied. The debtor's Third Amended Schedule C (Docket 40), asserts an exemption in the property for $500 pursuant to Cal. Civ. Proc. Code § 703.140(b)(1). However, the exemptions under Cal. Civ. Proc. Code § 703.140(b)(1) and (5) in the Third Amended Schedule C total $27,325, which exceeds the permissible maximum exemption amount of $26,925 under both subsections (b)(1) and (5). Accordingly, the debtor is not entitled to the $500 exemption in the property.

17. 14-27474-A-7 BRENT/ANGELINA WARD — MOTION TO AVOID JUDICIAL LIEN
GMW-4 — 7-15-15 [51]
VS. PORTFOLIO RECOVERY ASSOC., L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Brent Ward in favor of Portfolio Recovery Associates, L.L.C. for the sum of $6,099.97 on October 24, 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 Manteca, California. The debtor seeks avoidance of the lien.

The motion will be denied. The debtor's Third Amended Schedule C (Docket 40), asserts an exemption in the property for $500 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5).

However, the exemptions under Cal. Civ. Proc. Code § 703.140(b)(1) and (5) in the Third Amended Schedule C total $27,325, which exceeds the permissible maximum exemption amount of $26,925 under both subsections (b)(1) & (5). Accordingly, the debtor is not entitled to the $500 exemption in the property.

18. 14-27980-A-7 GKUBI SMART — MOTION FOR TURNOVER OF PROPERTY
HSM-10 — 7-22-15 [143]

Tentative Ruling: The hearing on the motion will be continued, as the parties, including the trustee and the debtor, have agreed to a continuance. The parties shall appear at the August 31 hearing to inform the court of the date to which they want the hearing continued.

19. 15-22481-A-7 THEO ADAMS — MOTION TO AMEND
BAP-2 — 7-22-15 [26]

Tentative Ruling: The motion will be denied.

Tiffany Nichols, the former spouse of the debtor, seeks an order altering,

amending, or reconsidering the July 10, 2015 order discharging the debtor, and to allow the movant to proceed with fraud claims against the debtor in a nonbankruptcy court.

The movant was notified on April 2, 2015 that this bankruptcy case had been filed and that July 6, 2015 was the deadline for filing objections to the debtor's discharge and/or seeking determination that a debt made nondischargeable by 11 U.S.C. § 523(a)2), (a)(4), and (a)(6). Dockets 5 & 8. The movant failed to file any such complaint. See 11 U.S.C. §§ 523(a), 727(a).

This motion follows an earlier June 1, 2015 motion for relief from the automatic stay filed by Ms. Nichols. The movant set the motion for hearing on July 13 but the court dismissed that motion without prejudice because it was not noticed for hearing correctly. The notice of the hearing incorrectly advised the debtor and other parties in interest that they could file written opposition 13 days before the hearing. Docket 23. This violated Local Bankruptcy Rule 9014-1(f)(1), which requires that written oppositions be filed at least 14 days prior to the hearing.

The motion to alter, amend or vacate the discharge order proceeds on the premise that if the court had not dismissed the motion for relief from the automatic stay, the discharge order either would not have been entered or it would have excepted the debt owed to the movant. This premise is wrong for many reasons.

First there is a timing problem. As indicated above, the movant set the hearing on her motion for relief from the automatic stay on July 13, 2015. This was after the deadline for filing complaints objecting to the discharge or to the discharge of debts. This deadline was July 6, 2015. This deadline is set pursuant to Fed. R. Bankr. P. 4004(a) and 4007(c) which requires that all such complaints be filed no later than 60 days after the first date set for the meeting of creditors. In this case, the meeting of creditors was set on May 7, 2015. Sixty days after the meeting was July 6. And, the clerk actually entered the discharge on July 10, three days before the motion for relief from the automatic stay was set to be heard.

Thus, to the extent the movant hoped to obtain leave to pursue a complaint in another court, the court could not have granted such relief until after the deadline for filing a complaint had expired.

Second, to the extent the movant asserts the motion for relief from the automatic stay was a request that the court except her debt from the debtor's discharge or deny the debtor's discharge altogether, the movant chose the wrong procedural vehicle. An objection to a chapter 7 debtor's discharge, as well as a request that a debt be excepted from a discharge pursuant to section 523(a)(2), (a)(4), or (a)(6), require an adversary proceeding. This relief cannot be sought by motion/contested matter. See Fed. R. Bankr. P. 7001(4), (6).

Third, the gist of the motion for relief from the automatic stay is that the movant wanted the bankruptcy court to allow a nonbankruptcy court to determine whether the debtor had committed fraud and to declare it nondischargeable, presumably under section 523(a)(2). A motion that sought to allow a nonbankruptcy court to determine whether a debt was nondischargeable pursuant to section 523(a)(2) was doomed to failure. Only the bankruptcy court has jurisdiction over such complaints. See 11 U.S.C. 523(c)(1).

Fourth, if the movant wished to except a debt from the debtor's discharge on the ground that it was incurred by actual fraud, the movant had two choices. First, she could have filed a complaint pursuant to 11 U.S.C. § 523(a)(2) by the July 6 deadline. Second, she could have requested an extension of time to file such complaint The movant failed to do either by the deadline of July 6. See Fed. R. Bankr. P. 4007(c) [extension must be requested before the deadline expires].

Fifth, both motions by the debtor conflate the automatic stay and the discharge. The automatic stay has nothing to do with the discharge other than the fact that the automatic stay expires as to the debtor upon entry of the discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). Granting a motion for relief from the automatic stay does not delay or diminish the discharge in any respect.

A chapter 7 bankruptcy discharge is entered automatically and promptly "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)," provided all conditions for its entry are satisfied. The language that "the court shall forthwith grant the discharge," is mandatory and not permissive, indicating that the entry of discharge is mandatory "on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e)."

If a timely complaint objecting to the discharge of a debt under sections 523(a)(2), (a)(4), and (a)(6) is filed, the discharge is still issued by the clerk but it is subject to the disposition of the complaint.

Finally, there is no basis for setting aside the discharge under Fed. R. Civ. P. 60(a) or (b) as incorporated by Fed. R. Bankr. P. 9014. The motion does not even mention these rules, much less establish facts warranting their invocation.

However, the motion indicates that the debtor may have been found criminally culpable and have been ordered to pay restitution to his victims. Assuming this is true and assuming the movant is one of the victims, the debtor's criminal liability may fall within the scope of 11 U.S.C. § 523(a)(13). This exception to discharge prevents a chapter 7 debtor from discharging "payment of an order of restitution issued under title 18, United States Code."

The court cannot tell from the record whether 11 U.S.C. § 523(a)(13) applies here, as there is only a plea agreement appended to the motion. The court sees no "order of restitution" in the record.

Similarly, to the extent the movant holds claims against the debtor that arise out of a marital settlement and/or judgment, whether those claims are for support or nonsupport, the state court may determine whether the claims are excepted from discharge pursuant to 11 U.S.C. § 523(a)(5) and (a)(15). Because the debtor has received his discharge, there is no automatic stay and the movant may proceed in state court.

To the extent the movant believes she cannot proceed in federal district court in connection with a criminal restitution award and/or in state court in connection with a marital dissolution judgment because a discharge has been entered, she is wrong. That discharge does not cover debts made nondischargeable by 11 U.S.C. §§ 523(a)(1), (a)(3), (a)(5), (a)(7)-(a)(19). She may ask any nonbankruptcy court to determine the applicability of these exceptions even after entry of the discharge. The only complaints that must be

filed prior to entry of the discharge order and that must be filed in this court are those specified in sections 523(a)(2), (a)(4), and (a)(6). See 11 U.S.C. § 523(c)(1).

The motion will be denied.

20. 15-25585-A-7 MATTHEW WATERS
BAP-1
LISA MCCRACKEN VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-29-15 [13]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Lisa McCracken, seeks relief from the automatic stay as to real property in San Francisco, California. The movant also requests the court:

(a) To determine the debtor's interest in the property;
(b) To order specific performance of a settlement agreement;
(c) To sustain her objection to the debtor's claimed exemption in the property under Cal. Civ. Proc. Code § 703.140(b)(5);
(d) To sanction the debtor for misrepresenting his interest in the property; and
(e) To sanction the debtor for misrepresenting that he resides at the subject property in his claiming an exemption under section 703.140(b)(5).

The request for relief from the automatic stay will be denied because the trustee must investigate and liquidate the debtor's interest in the property. The fact that the debtor appears to have entered into an unconsummated pre-petition settlement agreement with the movant to resolve his interest in marital property is not a reason to prevent the trustee from discharging these duties. See 11 U.S.C. § 704(a). The trustee has not had the opportunity to conduct the initial meeting of creditors which is scheduled to occur on September 10, 2015.

The request that this court determine the debtor's interest in the property and specifically perform a pre-petition settlement agreement between the debtor and the movant will be denied as well. Such determinations require an adversary proceeding and cannot be determined on a motion. Fed. R. Bankr. P. 7001(2), (7).

The exemption objection will be overruled because Cal. Civ. Proc. Code § 703.140(b)(5) applies to "any property" and does not require the debtor to reside on the property. Cal. Civ. Proc. Code § 703.140(b)(5) reads:

"(5) The debtor's aggregate interest, not to exceed in value one thousand three hundred fifty dollars ($1,350) plus any unused amount of the exemption provided under paragraph (1), in *any property*."

The requests for sanctions will be denied because the movant has not established that the debtor has misrepresented anything. The debtor's scheduling of a $30,000 interest in the property is not inconsistent with the terms of the settlement agreement. The debtor must schedule all property including property in which others have an interest, particularly community property.

Under the settlement agreement, the debtor is relinquishing any and all interest in the property, in exchange for a payment of $30,000 from the movant. If the movant was willing to pay $30,000 for the debtor's interest in the

property, the debtor is not misrepresenting such interest in the property by scheduling it. Schedule A values the debtor's interest in the property at $30,000. Docket 1, Schedule A.

Further, the debtor is not representing that he resides at the property by claiming an exemption under Cal. Civ. Proc. Code § 703.140(b)(5). As mentioned above, section 703.140(b)(5) allows an exemption in "any property" and it has no residence requirement for real property interests. Neither the motion, nor the supporting declaration establish a misrepresentation by the debtor about his residence on the property.

Conversely, the debtor listed a Lodi, California address as his residence, as of the petition date, on page one of the bankruptcy petition. Docket 1.

By this ruling, the court makes no determination of the debtor's or anyone else's interest in the property. See Fed. R. Bankr. P. 7001(2). The court cannot determine the merits of partition and avoidance claims in connection with this motion. Once again, such claims require an adversary proceeding.

21.	15-21789-A-7 DMW-2	CHARLES HAGEE AND NORMA BREEDEN-HAGEE	MOTION TO SELL 8-9-15 [24]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $3,000 the estate's unencumbered interest in a 2004 Chrysler Concord vehicle to Kimberly McCann. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

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

THE FINAL RULINGS BEGIN HERE

22. 15-20500-A-7 THOMAS/CARRIE LIEBRICH — MOTION TO AVOID JUDICIAL LIEN
VS. CITIBANK, N.A. — 7-14-15 [35]

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 Citibank for the sum of $15,918.38 on January 18, 2012. The abstract of judgment was recorded with El Dorado County on February 14, 2012. That lien attached to the debtor's residential real property in Placerville, 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 $195,759 as of the petition date. Dockets 37 & 1. The unavoidable liens totaled $140,039.77 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. Dockets 37, 20, 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended Schedule C. Dockets 37 & 20.

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

23. 15-22203-A-7 JIM/OLIVIA GONZALES — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK N.A. VS. — 7-23-15 [13]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2009 Audi A4 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 March 20, 2015 and a meeting of creditors was first convened on May 19, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 19. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 18, 2015, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 19, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 18, 2015.

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

section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

24. 13-29214-A-7 JAMES/NICHOLE PINTO — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
ADJ-3 — 8-3-15 [36]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 $3,400 in fees and $377 in expenses, for a total of $3,777. This motion covers the period from May 15, 2014 through August 3, 2015. The court approved the movant's employment as the trustee's attorney on June 23, 2014. 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) reviewing assets of the estate, (2) assisting the estate with the litigation of an avoidance claim, 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.

25. 14-30320-A-7 PETER WOLK — MOTION TO ABANDON
DLO-4 — 8-13-15 [96]

Final Ruling: The motion will be dismissed without prejudice because the mailing list of persons served with the motion has not been attached to the certificate of service. Docket 99. As a result, the court cannot tell whether service of the motion complies with Fed. R. Bankr. P. 6007.

26. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO COMPEL ABANDONMENT
JB-7 — 7-22-15 [106]

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

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Ripon, California (1111 6th Street). The entire equity in the property is exempt.

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

The debtors assert that the value of the property is $233,300. Docket 108. The property is encumbered by a deed of trust in favor of JPMorgan Chase Bank in the amount of approximately $66,469.29, outstanding property taxes in the amount of $344.77, and an IRS lien in the amount of $8,395, for a total of approximately $75,209.06. The debtors have exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730(a)(3). Docket 63.

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

27. 15-25449-A-7 SEVILLE DEAL
EJS-1
SRI CHURCH TERRACE, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-29-15 [19]

Final Ruling: The motion will be denied without prejudice because it is not supported by any admissible evidence, such as a declaration or an affidavit to support the motion's factual assertions. Although the motion contains exhibits of documents, there is no declaration or affidavit authenticating such exhibits. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

The motion also lacks a summary sheet, as required by Local Bankruptcy Rule 4001-1(a)(3).

28. 12-41763-A-7 ANTHONY/SANDY GRECO
SMD-3

MOTION TO
APPROVE COMPENSATION OF TRUSTEE
7-21-15 [121]

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, Susan Didriksen, has filed first and final motion for approval of compensation. The requested compensation consists of $18,250 in fees and $87.00 in expenses. The services for the sought compensation were provided from December 21, 2012 through the present. The sought compensation represents 85.2 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 $300,000 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $18,250 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $12,500 (5% of the next $950,000 (or $250,000)). Hence, the requested trustee fees of $18,250 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) conducting the meeting of creditors, (3) reviewing and analyzing claims, (4) preparing bank reconciliations and accounting, (5) employing professionals to assist the estate in the administration of estate assets, (6) selling estate assets, (7) discussing asset abandonment and sale issues with the estate's professionals, (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.

29.	14-29391-A-7 AP-1 U.S. BANK N.A. VS.	ENRIQUE QUILES	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-22-15 [68]

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 a real property in Fairfield, California. The property has a value of $600,000 and it is encumbered by claims totaling approximately $1,627,017. Dockets 44 & 45. The movant's deed is in first priority position and secures a claim of approximately $378,452.

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.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who

is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

30. 14-29391-A-7 ENRIQUE QUILES — COUNTER MOTION FOR AUTHORITY TO ABANDON REAL PROPERTY
DNL-4 — 7-30-15 [75]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 wishes to abandon the estate's interest in a real property in Fairfield, California (Pavilion Court). 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 property has an approximate value of $600,000, whereas its encumbrances total approximately at least $1,497,305, consisting of a claim for $237,431 ($378,452 per related stay relief motion also being heard on this calendar - Docket 72) in favor of U.S. Bank, a claim for $459,874 in favor of American Home Mortgage Servicing, Inc., and a claim for $800,000 held by First National Insurance Company of America. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.