UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 22, 2014 at 10:00 a.m.

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

1, 2, 6, 10, 11, 12, 13, 14, 19

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 OCTOBER 20, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 6, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 14, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 14-28903-A-7 DEBRA JAGER — MOTION FOR
JO-9501 — RELIEF FROM AUTOMATIC STAY
GLORIA BALDERAS VS. — 9-5-14 [14]

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 Balderas, seeks relief from the automatic stay as to real property in Sacramento, California. The movant is the legal owner of the property and the debtor leased it from her. The debtor defaulted under the lease agreement in March 2014. The movant served the debtor with a three-day notice to pay or quit on May 2, 2014. The notice expired without the debtor paying or surrendering possession of the property. On May 7, the movant filed an unlawful detainer action against the debtor. Although trial in that action was scheduled for May 27, the debtor's co-tenant, Gregory Monaco, filed a chapter 7 bankruptcy case on the day prior to the trial (Case No. 14-25434, filed on May 23, 2014). After the movant obtained relief from stay in Mr. Monaco's bankruptcy case, trial in the unlawful detainer action was rescheduled to September 4, 2014. The debtor filed the instant case on September 2, 2014.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due for the months of March, April, May, June, July, August and September 2014. Also, a three-day notice to pay or quit served on the debtor has expired, extinguishing her leasehold interest in the property. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise her remedies under state law to obtain 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.

2. 13-35215-A-7 HOMAIRA JAMASH
TB-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-3-14 [16]

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

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

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

Given the entry of the debtor's discharge on March 11, 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 $580,000 and it is encumbered by claims totaling approximately $592,660. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

3. 13-33618-A-7 CAROLE BAIRD
DNL-10

MOTION TO DISALLOW THE DEBTOR'S CLAIM OF EXEMPTION
8-25-14 [153]

Tentative Ruling: The motion will be denied.

The trustee objects to the debtor's $26,773 exemption claim under Cal. Civ. Proc. Code § 703.140(b)(5) in the 100% ownership interest in Cuatro Buenos Amigos, a California partnership, pursuant to 11 U.S.C. § 502(d), which provides that:

"Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724 (a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522 (i), 542, 543, 550, or 553 of this title."

The motion will be denied because the objection is untimely.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later."

The only Schedule C in the case docket was filed on November 5, 2013. The debtor has filed no further amendments to Schedule C. And, the meeting of creditors was concluded on February 22, 2014, meaning that the deadline for objecting to the debtor's exemptions expired on March 24, 2014.

Yet, this objection was filed on August 25, 2014. This motion then is untimely.

Further, even if the motion were timely, it would be denied. The trustee contends that because the debtor ordered her to turn over property of the estate pursuant to 11 U.S.C. § 542 and she did not comply with that order, 11 U.S.C. § 502(d) requires the disallowance of her exemption in the partnership.

The court disagrees. While the term "claim" in 11 U.S.C. § 502(d) may be interpreted broadly, it is not broad enough to include exemption claims. In referring to subsections (a) and (b) of § 502, § 502(d) obviously refers to claims represented by the language of § 502(a), "[a] claim or interest, proof of which is filed under section 501 of this title."

In other words, the reference to "claim" in § 502(d) is limited to claims proof of which is filed under § 501. Obviously, this does not include exemption claims because such claims are not filed pursuant to 11 U.S.C. § 501. They are filed pursuant to 11 U.S.C. § 522 and Fed. R. Bankr. P. 4003. The motion will be denied.

4. 13-33618-A-7 CAROLE BAIRD — MOTION TO ASSIGN THE DEBTOR'S RIGHT TO PAYMENT
DNL-11 — 8-25-14 [158]

Tentative Ruling: The motion will be granted in part.

The trustee is asking the court to "assign the Debtor's right to payment on account of her claim of exemption against the [Cuatro Buenos Amigos] Partnership to the Trustee in the amount of $26,521.00," pursuant to Cal. Civ. Proc. Code § 708.510(a), which provides that:

"Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments: (1) Wages due from the federal government that are not subject to withholding under an earnings withholding order. (2) Rents. (3) Commissions. (4) Royalties. (5) Payments due from a patent or copyright. (6) Insurance policy loan value."

Importantly, Cal. Civ. Proc. Code § 708.510(a) provides the court with authority only to "order the judgment debtor to assign to the judgment creditor . . . a right to payment." It does not provide the court with authority to assign the debtor's right to payment to the debtor.

On July 17, 2014, the court entered an order awarding $26,521 in damages against the debtor in favor of the trustee. Docket 143. In Schedule C, the debtor claimed an exemption in the partnership in the amount of $26,773. Docket 17.

As the trustee is a judgment creditor of the debtor in this case, the court will order the debtor to assign $26,521 of the exemption claim to the trustee.

5. 14-28020-A-7 RAYMOND/REGINA MARTINEZ — MOTION TO RECONSIDER DISMISSAL OF CASE
JCK-1 — 8-26-14 [15]

Tentative Ruling: The motion will be denied.

The debtor asks the court to vacate its August 25, 2014 dismissal of the case, arguing that "all of the documents were not accepted" when the debtor filed the missing petition documents on the eve of the deadline under the 14-day grace period.

This case was filed on August 6, 2014 as a skeletal petition. In the notice of incomplete filing (Docket 3), the debtor was told to file all missing documents - including the means test form, all schedules, and all statements - no later than August 20, 2014. The case was dismissed on August 25, 2014, after the court did not receive the missing documents. This motion was filed on August 26, 2014, one day later.

The motion will be denied for several reasons.

First, the motion makes no effort to brief the legal authority permitting the vacating of the dismissal.

Second, this case was filed on August 6, 2014, as a skeletal petition. The notice of incomplete filing informs the debtor to file the missing documents no later than August 20, 2014, including the means test form, all schedules, and all statements. The debtor's petition documents were due on the petition filing date, August 6, 2014, and not August 20, 2014. When the debtor chooses to wait until the end of the grace period for filing the petition documents, it is incumbent on the debtor to make certain that all documents are filed with the court and the case is not dismissed.

Importantly, August 19, 2014, the date when the debtor thought that he filed the missing documents, was a Tuesday, whereas the case was not dismissed until August 25, the following Monday. This means that the debtor had plenty of time to check with the court that all documents he thought were filed on August 19 were filed indeed. There is no evidence in the record that the debtor's counsel did anything after filing the documents on August 19 to ascertain whether they were filed indeed.

Third, the applicable standard here is Fed. R. Civ. P. 60(b). That rule, as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The assistant for the debtor's counsel, Janice Kyle, claims that "I've always understood the reference of 'Schedules Completion.pdf' as meaning all documents were accepted and filed." Docket 17.

Ms. Kyle's declaration attaches a receipt for the filing of documents on August 19, 2014 at 9:22 a.m. Dockets 17 & 18. The receipt lists three files, two .pdf and one .txt files. The first .pdf file is named "SchedulesCompletion" and the last two files are named "95337-MTRX-RMartinezII-J3062.PDF" and "95337-CMX-RMartinezII-J3062.TXT". The last two files represent a single file being submitted for filing. When submitted for filing, the last two files on the receipt are merged as one file and a single docket entry. On the case docket, the last two files on the receipt are represented by Docket 13, titled Amended Verification and Master Address List.

The only other docket entry of a pleading submitted for filing by the debtor on August 19, 2014 is Docket 12, which is titled Amended Master Address List and contains only an amended creditors' master address list, without the verification.

The filing receipt submitted by the debtor with the motion represents the filing of only two pleadings with the court. Those pleadings are Dockets 12 and 13 and neither of those pleadings contain the missing petition documents, including schedules and/or statements. Thus, the first file on the receipt, named as "SchedulesCompletion.pdf", did not contain any schedules or statements in it. It contained only what is found in Docket 12, an amended creditors' master address list without the verification.

And, the fact that the receipt contains a "SchedulesCompletion.pdf" file does not mean that the file indeed contains schedules and/or statements. The filer is still the one who controls the content of each file. This is because, even when the filer files an incorrect document in a file under the schedules pathway, the receipt would still list the file as a "SchedulesCompletion" file given it was filed under the schedules pathway, while the file itself may contain no schedules whatsoever.

Hence, the fact that the receipt contains the "SchedulesCompletion.pdf" file does not mean and it cannot be relied upon as evidence that the court has confirmed the receipt of all schedules and statements by the debtor. It is still incumbent on the debtor to confirm receipt of all documents by the court.

The failure to timely file the schedules and statements was not due to an error of the court - it was due to neglect by the debtor, and the court is not convinced that the debtor's neglect amounts to excusable neglect.

Not just neglect, but excusable neglect is required for reconsideration. Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (holding that relief from order under Rule 60(b) should not be given to a party whose failure to appear at a hearing was due to a mistake bordering on carelessness or was due to carelessness). Mere neglect is not sufficient for the granting of relief under Rule 60(b). Excusable neglect is required. See Greenspun at 382.

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

The court cannot vacate the dismissal because the neglect here was due to mere carelessness, *i.e.*, failing to ensure the files submitted for filing contained the correct documents, and there was nothing excusable about the failure to file all missing schedules and statements. The debtor had reasonable control over the filing of those documents, including time to check with the court post-filing whether the documents were filed indeed. Also, if the court were to vacate the dismissal on the basis of the debtor not filing the missing documents here, no motion to vacate dismissal would be ever denied. The motion will be denied.

6.	14-28929-A-7 ARCADIA DUENAS DN-1 CHANTHARY SIV VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-8-14 [14]

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, Chanthary Siv, trustee of the Siv Family Trust, seeks relief from the automatic stay as to real property in Stockton, California. The movant is the legal owner of the property and the debtor had only leased the property from the movant. After the debtor defaulted on the lease agreement, the movant filed an unlawful detainer action on August 13, 2014. On August 26, the movant obtained a default judgment for possession of the property against the debtor. Lockout was scheduled for September 4, 2014. The debtor filed the instant case on September 3, 2014. The movant seeks relief from stay to exercise his 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. Not only that the debtor has defaulted under the lease agreement, but the movant has obtained a judgment for possession of the property already. 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 obtain possession of the property in accordance with applicable state law.

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

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

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

7. 14-21730-A-7 TAMMY FIGUERA — MOTION FOR CONTEMPT
8-11-14 [76]

Tentative Ruling: The motion will be denied.

The debtor complains that Jasbir Brar did not pay the $3,475 ordered by the court in its order entered on July 29, 2014. Docket 72. That order provides, in pertinent part:

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

The debtor has filed a declaration stating that he mailed a personal check to

the debtor on August 2, 2014. Docket 80 at 1-2. The check is attached to the declaration. Docket 80 at 10. The check was mailed to the debtor's former residence in Rocklin, California. Docket 80 at 2. The house is vacant. Id. The debtor apparently did not receive the check.

After this motion was filed, Mr. Brar purchased a cashier check for $3,475 and mailed it to his attorney, who in turn mailed it to the debtor's former residence in Rocklin, California on August 21, 2014. Docket 80 at 2, 3, Ex. 3.

The debtor does not dispute that she wanted the check to be sent to her former residence in Rocklin, California. She says, however, that she did not receive the personal check from Mr. Brar.

Nevertheless, she admits to receiving the cashier check from Mr. Brar's attorney, Glen Navis.

As the debtor has now received the payment ordered by this court, this motion is moot.

To the extent the debtor continues to complain that she did not receive the payment within the time ordered by the court, "no less than seven days after entry of th[e] [July 29, 2014] order," the court has no reason to disbelieve Mr. Brar in his representation that he sent a personal check for the required sum to the address in Rocklin, California on August 2, 2014, within the time allotted by the court. His statement is supported by a declaration executed under the penalty of perjury. Docket 80 at 2, ¶ 3.

The court also does not have evidence from the debtor that she contacted Mr. Nevis before filing this motion, to inquire about why she had not received the ordered payment within the time allotted by the court. If she had contacted him, the filing and prosecution of this motion could have been easily averted.

The court finds no basis upon which to order further relief. The motion will be denied.

8. 14-21730-A-7 TAMMY FIGUERA — VIOLATION OF COURT'S ORDER ENTERED ON JULY 28, 2014
8-11-14 [77]

Tentative Ruling: None. This matter is duplicative of the debtor's motion for contempt.

9. 14-20431-A-7 JENNIFER MILLS — MOTION TO SELL
DNL-4
8-20-14 [33]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and where is for $60,000 the estate's interest in the following assets to the debtor:

- a real property in Sacramento, California (4820 I Street), subject to any liens or encumbrances,

- a 2005 BMW 645 CI vehicle,

- a real estate commission received by the debtor post-petition in the gross

amount of $46,267.19, and

- $3,750 in gross income earned by the debtor pre-petition, between January 1, 2014 and January 15, 2014, but received post-petition.

The real property has a scheduled value of $625,000, but the trustee believes that the value of the property is approximately $795,000. The encumbrances on the property total $661,766, with a single mortgage against the property totaling $655,530 and outstanding property taxes in the approximate amount of $6,236. Although the debtor's Schedule C lists an exemption claim of $0.00 against the property, the debtor apparently is planning to amend her exemption to $75,000, which would leave no nonexempt equity in the property, even if it is sold for $795,000.

The debtor's BMW vehicle has a scheduled value of $21,000 and, even though it is fully exempt in Schedule C, the debtor has apparently proposed to lower the exemption in the vehicle to $2,900.

Although in Schedule C the debtor exempted only $5,753.76 in the real estate commission, she has apparently proposed to exempt the commission in full in an amended exemption.

The debtor has claimed an exemption of $1,687.50 in the $3,750 of pre-petition earnings.

While the trustee believes that the debtor's exemptions in the commission and the earnings may be successfully objected to, assuming the debtor amends the exemptions as she has proposed, the trustee has agreed to accept the debtor's offer to purchase the above assets for $60,000, after taking into account the potential objections to the proposed exemption claims.

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 and it will avoid administrative costs of the estate having to sell the above assets otherwise. For instance, if the trustee were to market and sell the property via a real estate broker, he would have to pay a real estate commission. 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.

10. 14-27937-A-7 BETTY SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 9-5-14 [14]
DEUTSCHE BANK TRUST COMPANY AMERICAS 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, Deutsche Bank Trust Company Americas, seeks relief from the automatic stay as to a real property in West Sacramento, California. The property has a value of $175,000 and it is encumbered by claims totaling approximately $207,999. The movant's deed is the only encumbrance against the property.

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

Thus, the motion will be granted 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.

11. 12-21645-A-7 LISA TAYLOR — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
DNL-6 — 8-29-14 [92]

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, the 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.

Randy J. Harvey Law, P.C. and Michael Wilcox, special counsel for the estate, have filed their first and final motion for approval of compensation. The requested compensation consists of $31,316.29 in fees (reduced from a contractual contingency fee of $50,000) and $6,001.96 in expenses, for a total of $37,318.25. The period covered by this motion is from December 2, 2009 until the present. The requested compensation is based on a 40% contingency

fee agreement and reimbursement of advanced costs. The movants have agreed to split the fee among themselves equally.

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 compensation relates to services provided in employment discrimination litigation relating to the debtor's claims against her former employer, TSAR. After TSAR filed for bankruptcy, the litigation continued, involving the debtor's $2,385,520 proof of claim against TSAR's bankruptcy estate. The underlying causes of action consisted of civil rights and wrongful termination claims. The litigation with the estate of TSAR was eventually settled for $125,000.

The movants' services consisted, without limitation, of: preparing the complaint, prosecuting the complaint, advising the trustee about the merits of the claims, attending a day-long 2004 exam of the debtor, performing legal research on issues raised by counsel of the TSAR estate, conducting discovery and addressing discovery disputes, attending court hearings, preparing and attending mediation, and negotiating settlement of the estate's claims.

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.

12. 12-21645-A-7 LISA TAYLOR — MOTION TO EMPLOY
DNL-8 — 8-29-14 [88]

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, the 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 to employ Gonzales & Sisto as accountant for the estate to assist the trustee with the preparation of estate tax returns Also, the trustee is requesting authority to pay G&S a flat fee of $1,250 for its services, without 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."

The court concludes that the terms of employment and compensation are reasonable. G&S is a disinterested person within the meaning of 11 U.S.C. §

327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

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

13. 12-21645-A-7 LISA TAYLOR
DNL-9

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-29-14 [98]

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 $31,316.29 in fees (reduced from $55,598) and $0.00 in expenses (reduced from $1,334.70). This motion covers the period from March 13, 2012 through August 28, 2014. The court approved the movant's employment as the trustee's attorney on March 19, 2012. In performing its services, the movant charged hourly rates of $150, $175, $195, $225, $275, $350, $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 and analyzing the debtor's employment discrimination claims against TSAR's bankruptcy estate, (2) communicating with the debtor's pre-petition attorney in charge of prosecuting the claims, (3) preparing for and examining the debtor at the meeting of creditors, (4) conducting discovery, including 2004 examinations, (5) preparing and prosecuting stay relief and annulment motions in the TSAR bankruptcy case, (6) advising the trustee about various issues pertaining to the litigation, (7) preparing for and participating in a mediation, (8) extensively communicating with the trustee, special counsel for trustee and the opposing counsel of the TSAR estate, (9) attending court hearings, (10) negotiating settlement of the employment discrimination claims, and (11) 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.

14. 12-36347-A-7 ARNOLD THREETS AND TESSA BANUELOS-THREETS — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 WELLS FARGO BANK, N.A. VS. — 9-2-14 [200]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Auto Finance, seeks relief from the automatic stay with respect to a 2012 Toyota Camry vehicle.

The trustee has filed a response to the motion, pointing out that the automatic stay as to the vehicle has been dissolved in light of 11 U.S.C. § 362(h) and § 521(a)(2). The court agrees.

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 September 7, 2012 and a meeting of creditors was first convened on October 17, 2012. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 7. 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 November 16, 2012, 30 days after the initial meeting of creditors.

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

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

expired.

Therefore, without this motion being filed, the automatic stay terminated on November 16, 2012.

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.

15. 14-26949-A-7 JUSTIN/ELAINE NELSON — ORDER TO SHOW CAUSE 8-25-14 [33]

Tentative Ruling: The case will be dismissed.

The debtor filed an amended master address list on August 11, 2014 (Docket 27), but did not pay the $30 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

16. 14-27655-A-7 DESTINY TURNER — ORDER TO SHOW CAUSE 9-4-14 [41]

Tentative Ruling: The case will be dismissed.

The debtor filed an amended master address list on August 21, 2014 (Docket 27), but did not pay the $30 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

17. 14-27860-A-7 ROBERT/JULIE KNOX — MOTION TO AVOID JUDICIAL LIEN 8-18-14 [9]
BLG-1
VS. STANLEY R. EDELMAN

Tentative Ruling: The motion will be dismissed as moot.

A judgment was entered against Debtor Julie Knox in favor of Stanley Edelman for the sum of $727,673 on August 16, 2000. The judgment was renewed on July 12, 2007 for $1,092,506.30. The abstract of judgment was recorded with Shasta County on January 6, 2011. That lien attached to the debtor's residential real property in Redding, California.

The debtors are asking the court to avoid the lien pursuant to 11 U.S.C. § 522(f).

Mr. Edelman opposes the motion, arguing that: the debt is nondischargeable under 11 U.S.C. § 523(a)(9); the debtors are abusing the bankruptcy system by seeking the avoidance of the lien; the debtors are abusing the bankruptcy system given their prior two bankruptcy cases, one in 1998 and the other in 2000; the debtors have hindered and delayed Mr. Edelman's attempts to collect on the judgment; the equities require that lien avoidance be denied.

The debtors have filed a reply, questioning the validity of Mr. Edelman's judicial lien by pointing out that the lien did not comply with Cal. Civ. Proc. Code § 683.180(a), which provides that "If a judgment lien on an interest in real property has been created pursuant to a money judgment and the judgment is renewed pursuant to this article, the duration of the judgment lien is extended until 10 years from the date of the filing of the application for renewal if, before the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located."

The court rejects Mr. Edelman's opposition. There is no equity exception to the avoidance requirements under 11 U.S.C. § 522(f)(1). Also, as a matter of law, the debtors may avoid a judicial lien impairing the exemption on their residence, even though the debt underlying the lien may not be dischargeable under 11 U.S.C. § 523(a)(9). Walters v. United States Nat'l Bank in Johnstown (In re Walters), 879 F.2d 95, 97-98 (3rd Cir. 1989); see also Ewiak v. Ebner (In re Ewiak), 75, B.R. 211, 212-13 (Bankr. W.D. Pa. 1987). 11 U.S.C. § 522(c), which makes exempt property liable for some debts enumerated in section 523(a), makes no reference to debts nondischargeable under section 523(a)(9).

Turning to the merits of the motion, as the debtors are now taking the position that the lien on the property is invalid, the court will dismiss this motion as moot. If the subject judicial lien on the property is invalid, avoiding that lien under 11 U.S.C. § 522(f)(1) is unnecessary. The court does not issue advisory opinions. This ruling makes no determination about the extent, validity or priority of the subject lien. The motion will be dismissed as moot.

In the event the debtors decide to refile this motion, they should note that there is no evidence of their entitlement to the claimed exemption of $170,000 under Cal. Civ. Proc. Code § 704.730(a)(3). The debtors must establish their entitlement to the exemption, even if no one has timely objected to their exemption claim. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

18. 11-34464-A-7 STUART SMITS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MHK-2 — 6-11-14 [280]
ELIAS D. BARDIS VS.

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

The movant, Elias Bardis, seeks relief from stay as to real property in Sacramento, California (Mills Road).

Given the entry of the debtor's discharge on June 13, 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 movant asserts that the property has a value of between $645,000 and $700,000 and it is encumbered by claims totaling approximately $1,164,284. The movant holds a judgment lien against the property, securing a claim of approximately $786,166.

The movant's lien is in fourth priority position, after a mortgage for approximately $340,000 held by JPMorgan Chase Bank and two judgment liens held by JPMorgan Chase Bank for a total of approximately $38,000.

The motion will be denied as to the estate because the only evidence of value for the property is Elias Bardis' own opinion of value, based on his "review of on-line databases, including Zillow. Docket 282 at 2. He states that his opinion of value is based on information and belief. Id.

The evidence of value proffered by the movant is inadmissible. The movant's declaration does not qualify the movant as an expert witness, permitting him to render opinions based on scientific, technical or otherwise specialized knowledge. Thus, the movant's opinion of value violates Fed. R. Evid. 701(c), which forbids lay witnesses to render opinions "based on scientific, technical, or other specialized knowledge."

Further, by admitting that his opinion of value is based on information and belief, the movant admits that he has no personal knowledge of how that opinion was formed. In other words, the movant does not know whether his opinion of value is based on sufficient facts or data and is the product of reliable principles and methods, as required by Fed. R. Evid. 702(b) and (c).

The movant also admits that he does not have the personal knowledge as required by Fed. R. Evid. 602. His declaration states nothing about him inspecting the subject property.

Finally, to the extent the movant's opinion of value is repeating statements made on websites or by other experts, such opinion is also inadmissible hearsay, in violation of Fed. R. Evid. 802.

Valuation evidence based on reports from "zillow.com" and other similar Internet based sources are particularly troublesome. This evidence was not admissible. It is hearsay. See Fed. R. Evid. 801. And, while Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria. The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a participatory site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Due to the lack of admissible evidence of value, the court cannot determine whether and to what extent the movant's interest in the property is adequately protected. Accordingly, the motion will be denied as to the estate.

19. 14-28382-A-7 JOSE PENA — MOTION TO COMPEL ABANDONMENT 9-4-14 [15]

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

the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his lawn maintenance business.

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

The business assets include equipment (three lawn mowers, one blower, two weed eaters and miscellaneous hand tools) with a value of $1,200 and general intangibles with a value of $1,000, as listed in items 23 and 29 of Amended Schedule B. Docket 14. The assets have been claimed fully exempt in Amended Schedule C. Docket 14. Given the exemption claims, the court concludes that the business, to the extent of the assets identified above, is of inconsequential value to the estate. The motion will be granted.

20. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-1
VS. WELLS FARGO BANK NEVADA — 8-12-14 [86]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Wells Fargo Bank for the sum of $6,006.20 on September 2, 2003. The abstract of judgment was recorded with Tehama County on October 22, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California.

According to Schedule A, the property actually consists of "[t]wo separate commercially zoned real properties located at 8320 Hwy. 99 East Los Molinos, CA 96055, consisting of an old motel w/13 rooms[,] Krishna Reddy is 50% owner of both pieces of property." The two assessor parcel numbers for the properties are listed as "APN: 078-120-731" and "APN: 078-120-741." Docket 12, Schedule A.

According to the debtor, one of the real properties is a four-acre parcel, on which there is a 12-unit motel (made up of two sections, an eight-unit part and a four-unit part), the remains of a restaurant that burned down and has not been rebuilt, and the debtor's mobile home that is on a foundation. The other property is a two-acre parcel without any structures, but containing a septic tank, leach fields for the eight-unit section of the motel and the former restaurant structure on the four-acre property, and a pump to draw waste from the former restaurant to the leach fields.

The debtor is asking the court to apply his exemption to the four-acre property only and correspondingly to avoid the lien only as to that property.

The motion will be denied.

First, pursuant to the debtor's Schedule A, both the four-acre and two-acre real properties have an approximate value of $350,000 as of the petition date. The valuation of the properties in Schedule A, as well as the declaration of Hubbard Vanderjack, also valuing the properties together at $350,000, apply one

value to both real properties. Dockets 12 & 88.

However, the court cannot calculate to what extent, if any, the debtor's exemption on the four-acre parcel is impaired by the subject judicial lien. The court cannot include any value or equity from the two-acre property in the avoidance analysis pertaining to the four-acre property. The debtor must then amend his Schedule A to give separate valuations for each of the properties.

Second, the debtor's Amended Schedule C asserts a $175,000 exemption against both the four-acre and two-acre real properties. Docket 13. Until the debtor amends his exemptions, the court cannot consider his exemption as applying to the four-acre property only.

Finally, the court also needs clarification about which encumbrance applies to which of the two real properties. Without distinguishing between the two real properties, the unavoidable liens in Schedule D total $37,910.09 on that same date, consisting of a mechanics lien for $524.20 in favor of Dudleys Excavating, Inc. and a property tax lien for $37,385.89 in favor of Tehama County Tax Collector. Docket 12. The court cannot tell which of the two properties are impacted by these encumbrances, the four-acre, the two-acre or both properties. The motion will be denied.

The court reminds the debtor's counsel not to repeat or recycle docket control numbers. Docket control numbers should be utilized sequentially in order to avoid confusion. This motion is not identical to the motion filed by the debtor with respect to the same lienholder before.

21. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-2
VS. CITIBANK (SOUTH DAKOTA), N.A. — 8-12-14 [92]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of $3,630.98 on August 4, 2003. The abstract of judgment was recorded with Tehama County on September 2, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's September 22, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

22. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-3
VS. GEORGE AND BETTY HARMS — 8-12-14 [98]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of George and Betty Harms for the sum of $417,012.77 on June 22, 2003. The abstract of judgment was recorded with Tehama County on August 14, 2003. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's September 22, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

23. 14-22787-A-7 JOSEPH EITZEN
DMB-4
VS. BETTY SHEASGREEN

MOTION TO
AVOID JUDICIAL LIEN
8-12-14 [104]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Betty Sheasgreen for the sum of $1,293,000 plus costs on May 24, 2002. The abstract of judgment was recorded with Tehama County on August 2, 2002. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's September 22, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

24. 14-22787-A-7 JOSEPH EITZEN
DMB-5
VS. BUTTE COUNTY CREDIT BUREAU

MOTION TO
AVOID JUDICIAL LIEN
8-12-14 [110]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Butte County Credit Bureau for the sum of $1,520.63 on November 6, 1996. The abstract of judgment was recorded with Tehama County on November 26, 1996. That lien attached to the debtor's 50% interest in a commercial real property in Los Molinos, California. The debtor is asking the court to avoid the lien.

The motion will be denied for the reasons stated in the court's September 22, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

This motion will be denied also because the judgment underlying the judicial lien the debtor is seeking to avoid has expired. Judgments in California are valid only for 10 years, unless renewed, allowable for another 10 years. The judgment here was entered on November 6, 1996, nearly 18 years ago. Without evidence that the judgment was renewed, the court is not convinced that the subject judicial lien is enforceable and that avoidance of the lien is warranted.

25. 14-28490-A-7 TAWNYA SLOAN
MOH-1

MOTION TO
VACATE DISMISSAL
9-8-14 [18]

Tentative Ruling: The motion will be denied.

The debtor asks the court to vacate its September 8, 2014 dismissal of the case, arguing that the error of the assistant of the debtor's counsel in not selecting the file containing the means test form and not filing that form timely, somehow is basis for vacating the dismissal. This motion was filed on September 8, 2014.

The motion will be denied for several reasons.

First, the motion makes no effort to brief the legal authority permitting the vacating of the dismissal.

Second, this case was filed on August 21, 2014, as a skeletal petition. The

notice of incomplete filing informs the debtor that she has until September 4, 2014 to file all missing documents, including the means test form, all her schedules, and all her statements. The debtor's petition documents were due on the petition filing date, August 21, 2014, and not September 4, 2014. When the debtor chooses to wait until the end of the grace period for filing the petition documents, it is incumbent on the debtor to make certain that all documents are filed with the court and the case is not dismissed.

Importantly, September 4, 2014 was a Thursday, while the case was not dismissed until September 8, the following Monday. This means that the debtor's counsel had plenty of time to check with the court that all documents he thought were filed on September 4 were filed indeed. There is no evidence in the record that the debtor's counsel did anything after filing the documents on September 4 to ascertain whether they were filed indeed.

Third, the applicable standard here is Fed. R. Civ. P. 60(b). That rule, as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The assistant for the debtor's counsel, Clancy Callahan, admits that somehow the means test form was not selected when she submitted for filing the missing petition documents on September 4, 2014. She writes, "Through my error and oversight the Means Test was accidentally excluded from filing and has caused this case to be dismissed." Docket 20 at 2.

In other words, at best, the failure to file the means test form was due to neglect. Yet, not just neglect, but excusable neglect is required for reconsideration. Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (holding that relief from order under Rule 60(b) should not be given to a party whose failure to appear at a hearing was due to a mistake bordering on carelessness or was due to carelessness). Mere neglect is not sufficient for the granting of relief under Rule 60(b). Excusable neglect is required. See Greenspun at 382.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the debtor; 2) the length of delay caused by the neglect and its

effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith].” Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The court cannot vacate the dismissal because the neglect here was due to mere carelessness and there was nothing excusable about the failure to file the means test form. The debtor had reasonable control over the filing of the means test form, including time to check with the court post-filing whether the form was indeed filed. Also, if the court were to vacate the dismissal on the basis of the debtor not filing the form here, no motion to vacate dismissal would be ever denied. The motion will be denied.

26. 13-32295-A-7 LORRAINE LOPEZ — MOTION TO CONVERT CASE 8-20-14 [20]
DEF-1

Tentative Ruling: The motion will be denied.

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).

However, the motion will be denied because it includes no evidence that the debtor is eligible for chapter 13 relief. Stating that the debtor is eligible for chapter 13 relief is a legal conclusion that is unsupported by factual assertions. For instance, there is nothing in the motion stating what are the debtor’s secured and unsecured debts.

Further, there is no evidence of any disposable income with which the debtor will be able to fund the proposed chapter 13 plan, calling for monthly payments of $217. Docket 23, Ex. B at 1. The debtor’s declaration in support of this motion states nothing about what has changed in the debtor’s monthly income and expenses allowing her now suddenly to propose a chapter 13 plan. Docket 22. She says nothing about having sufficient disposable income to fund any plan either. Although the declaration refers to “amended Schedules I and J” attached as Exhibit A to the motion, Exhibit A consists of the debtor’s original Schedules I and J, reflecting a negative monthly income of $19.56. The debtor has not established that she is eligible for chapter 13 relief.

Next, the court is persuaded that the subject motion is an attempt by the debtor to have the case converted for an improper purpose or in bad faith, namely to evade the trustee’s attempts to take possession of and discover evidence pertaining to nonexempt estate assets, such as the debtor’s 2013 tax refund.

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).

"The Bankruptcy Code and Rules 'impose upon the bankruptcy debtors an express, affirmative duty to disclose all assets, including contingent and unliquidated claims.' In re Coastal Plains, 179 F.3d at 207-208; Hay, 978 F.2d at 557; 11 U.S.C. § 521(1). The debtor's duty to disclose potential claims as assets does not end when the debtor files schedules, but instead continues for the duration of the bankruptcy proceeding. In re Coastal Plains, 179 F.3d at 208; Youngblood Group v. Lufkin Fed. Sav. & Loan Ass'n, 932 F.Supp. at 867; Fed. R. Bankr.P. 1009(a) (schedules may be amended as a matter of course before the case is closed)."

Hamilton v. State Farm Fire & Casualty Co., 270 F.3d 778, 785 (9th Cir. 2001); see also Chanthavong v. Aurora Loan Services, Inc., 448 B.R. 789, 797 (E.D. Cal. 2011).

Debtors have a continuing duty to disclose assets and changes in assets by amending their schedules. See Searles v. Riley (In re Searles), 317 B.R. 368, 377-78 (B.A.P. 9th Cir. 2004); see also 11 U.S.C. §§ 521(1), 541(a)(7).

11 U.S.C. § 521(a)(3) mandates that "[t]he debtor shall- if a trustee is serving in the case ... , cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title."

In her original Schedule A, the debtor - a realtor, according to her Schedule I - listed the value of her real property in Sacramento, California at $79,751. Docket 1. In her original Schedule C, the debtor had exempted $1.00 in the property. Id.

Shortly after this case was filed on September 19, 2013, the trustee notified counsel for the debtor that the property had been undervalued by approximately $200,000. As a result, on November 26, 2013, the debtor amended her Schedule A to increase the value of her property to $275,000. Docket 12. The debtor also amended her Schedule C, amending her exemptions, changing them from the 703 to the 704 exemption scheme under the Cal. Civ. Proc. Code. Docket 12. The debtor exempted $110,131.74 of her real property in Schedule C, which, along

with the two mortgages on the property in the aggregate of $164,868, leaves no nonexempt equity in the property. Nevertheless, by changing from the 703 to the 704 exemptions, Amended Schedule C leaves $5,576 of nonexempt equity in the debtor's 2005 Honda Accord vehicle and leaves 100% of her 2013 tax refund as nonexempt.

From February through August 2014, the trustee has on multiple occasions requested from the debtor to turn over her 2013 tax return, to account for the 2013 refund and to state her intentions about the Honda vehicle. Besides indicating that she intends to keep the vehicle and that she is aware of the refund not being exempt, the debtor has failed to comply with the trustee's requests. Although at one point counsel for the debtor told the trustee that she was unresponsive due to being ill, the court is unconvinced that her illness prevented her from responding to the trustee's requests for the entire period between February and August 2014. Docket 33 ¶ 6.

More, on August 15, 2014, the trustee also requested by a letter a list of the debtor's outstanding realtor commissions as of the petition date. As of September 8, 2014, the trustee had received no response from the debtor. Nevertheless, this motion was filed on August 20, 2014, indicating to the court that the debtor has been healthy enough to communicate with her counsel and even retain another attorney. Her present counsel, David Foyil, was retained by the debtor only on July 17, 2014. Docket 23, Exs. C & D.

In other words, this motion seeking conversion to chapter 13 is coming as an afterthought by the debtor only after the trustee has began to collect and administer the estate's assets - assets and information about assets, which the debtor has been refusing to turn over to the trustee.

The debtor's initial undervaluation of the real property by approximately $200,000 amounts to misrepresentation, especially given that the debtor is a realtor. Also, her refusal to comply with the trustee's requests for turnover, accounting, and information constitutes egregious behavior. The debtor has a continual duty to cooperate with the chapter 7 trustee in the administration of the estate. 11 U.S.C. § 521(a)(3). The court concludes then that the debtor's request for conversion is in bad faith or, in the least, it is for an improper purpose, namely, to evade and hinder the trustee's collection and administration of estate assets.

Finally, the court notes that the debtor's chapter 7 discharge was entered on February 3, 2014. Yet, the motion does not explain why the debtor is entitled to obtain a chapter 13 discharge as well. The motion will be denied.

FINAL RULINGS BEGIN HERE

27. 14-26109-A-7 CRAIG/VIRGINIA BEACH
RCO-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-18-14 [21]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Lodi, California. The property has a value of $410,000 and it is encumbered by claims totaling approximately $467,135. The movant's deed is in first priority position and secures a claim of approximately $399,751.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 6, 2014.

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

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

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.

28. 14-21912-A-7 GREGORY STANICH — MOTION TO REVOKE DISCHARGE
MWB-2 — 8-20-14 [21]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 debtor is asking the court to vacate the discharge entered in this case on June 11, 2014 because the debtor received a chapter 7 discharge on November 14, 2006 in a chapter 7 case filed on July 26, 2006, less than eight years prior to the filing of the instant case on February 27, 2014.

11 U.S.C. § 727(a)(8) provides that:

"(a) The court shall grant the debtor a discharge, unless—

. . .

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition."

Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"The court may correct a clerical mistake or a mistake arising from oversight

or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave."

As the court entered the debtor's discharge in this case in error because he had obtained another chapter 7 discharge in a case (Case No. 06-22760-C-7) filed less than eight years prior to the filing of this case, the court will vacate the discharge entered in this case on June 11, 2014. This motion will be granted.

29. 14-21114-A-7 MICHELLE ERNSTER — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 8-22-14 [18]
ONEWEST BANK, N.A. VS.

Final Ruling: This motion has been dismissed voluntarily by the movant. Docket 34.

30. 14-24017-A-7 KENNETH/JOANN ASBURY — MOTION TO APPROVE COMPROMISE
BHS-3 — 8-25-14 [48]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtors, resolving the trustee's objection to their $3,825 exemption in a 2002 Acura TLS vehicle, the estate's interest in $1,975 of nonexempt equity in a 2003 GMC Yukon Denali, and the estate's interest in the nonexempt equity of a real property in Elk Grove, California (9318 Lancashire Court). See Docket 20.

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

The debtors claim that the value of the property is $430,000, whereas the trustee proposes to list the property for sale at $508,000. But, the trustee's realtor says that she wants to list the property for sale at $508,000, even though her declaration does not say anything about the need for repairs or replacement of the roof, flooring, bathrooms, fireplace siding, deck, fence, A/C compressor, and garage door.

Under the terms of the compromise, the debtors will pay $15,000 to the estate and will retain their interests in the two vehicles and the real property. The

settlement payment will be made in $500 monthly installments starting on October 1, 2014.

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 trustee's proposed list price does no take into account the needed repairs and updates on the real property, given the administrative costs of the trustee having to sell the vehicles and the real property, and given the inherent costs, risks, delay and inconvenience of further litigation, such as the pending exemption objection and pending abandonment motion, 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.

31. 14-24017-A-7 KENNETH/JOANN ASBURY — MOTION TO COMPEL ABANDONMENT
PLC-1 — 7-2-14 [20]

Final Ruling: Although the hearing on this motion was continued to October 20, 2014 at 10:00 a.m. (Docket 54), the motion will be dismissed as moot because the trustee has settled the estate's interest in the property that is the subject of this motion.

32. 13-34622-A-7 LONNIE NIELSON — MOTION TO AVOID JUDICIAL LIEN
RJB-1
VS. USA REAL ESTATE INVESTMENT TRUST — 8-15-14 [37]

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 U.S.A. Real Estate Investment Trust for the sum of $689,424.10 on September 10, 2010. The abstract of judgment was recorded with Sacramento County on January 27, 2011. That lien attached to the debtor's 12.2% in a 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 Schedule A, the real property has a value of approximately $1,889,424.10 as of the date of the petition. The unavoidable liens total $3,042,045 on that same date, consisting of a mortgage in favor of Umpqua Bank in the amount of $1.2 million, IRS tax liens totaling $1,389,077, and California FTB tax liens totaling $452,968. In Schedule C, the debtor claimed an exemption in the 12.2% property interest pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $25,214.

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).

33. 14-28222-A-7 PATRICK/LISAMARIE HAYES — ORDER TO SHOW CAUSE 8-27-14 [12]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on August 30, 2014. No prejudice has resulted from the delay.

34. 14-20431-A-7 JENNIFER MILLS
DNL-5 — MOTION TO APPROVE COMPENSATION FOR REALTORS 8-20-14 [38]

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.

Gina Crane of Coldwell Banker, real estate broker for the trustee, has filed her first and final motion for approval of compensation. The requested compensation consists of $3,000 in fees and $0.00 in expenses. The court approved the movant's employment as the trustee's real estate broker on April 14, 2014. The requested compensation is based on a 6% commission compensation agreement.

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."

Although the property is not being sold to a third party after marketing by the movant, it is being sold to the debtor after Ms. Crane rendered significant services to the estate, including visiting and inspecting the property, analyzing comparative property values, contacting other agents about the property, and advising the trustee about the value and listing of the property. The movant advised the trustee that the property should be listed for sale at $795,000.

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

35. 14-23434-A-7 LONNIE HINES — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 8-14-14 [22]
THE BANK OF NEW YORK MELLON VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on August 20, 2014, automatically dissolving the automatic stay. See 11 U.S.C. § 362(c)(2)(B). The motion is not requesting nunc pro tunc or 11 U.S.C. § 362(d)(4) relief.

36. 14-28359-A-7 DEBRA PARISOTTO — ORDER TO SHOW CAUSE
9-2-14 [14]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the filing fee in full when she filed this case on August 18, 2014. The outstanding amount of the fee was $29. However, the debtor paid the fee on September 4, 2014. No prejudice has resulted from the delay.

37. 13-20260-A-7 CHRISTOPHER/MONICA FREEMAN — MOTION TO AVOID JUDICIAL LIEN
DMH-1 — 8-26-14 [39]
VS. MIDLAND FUNDING, L.L.C.

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. 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)."

In the event the motion is refiled, the motion record should contain the recorded abstract of judgment that may be basis for the lien the debtors are seeking to avoid. Any reference in the motion to the lien without the recorded abstract of judgment being part of the record is inadmissible hearsay. Fed. R. Evid. 802.

The court also notes that the debtors have claimed no exemption in the property as to which they are seeking avoidance of the lien.

Further, service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by

appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Midland Funding, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

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

The court also reminds counsel for the debtors to utilize docket control numbers sequentially, without reusing or recycling them. Using the same docket control number on different motions, even when they are seeking identical relief, creates confusion about which documents pertain to which motion.

38. 14-24260-A-7 CATHERINE SEBALA — MOTION TO AVOID JUDICIAL LIEN
PK-2
VS. CITIBANK, N.A. — 8-25-14 [18]

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 $25,601.55 on July 22, 2013. The abstract of judgment was recorded with Sacramento County on January 14, 2014. 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 Schedule A, the subject real property has an approximate value of $150,539 as of the date of the petition. The unavoidable liens total $210,571 on that same date, consisting of a single mortgage in favor of PNC Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C.

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

39. 14-27860-A-7 ROBERT/JULIE KNOX — MOTION TO AVOID JUDICIAL LIEN
BLG-2
VS. COUNTY OF SHASTA — 8-18-14 [13]

Final Ruling: The motion will be dismissed without prejudice because it was

not served properly on the respondent creditor, County of Shasta, as prescribed by Fed. R. Bankr. P. 7004(b)(6), which requires service "[u]pon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof."

Cal. Civ. Proc. Code § 416.50 prescribes that:

"(a) A summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

(b) As used in this section, 'public entity' includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."

Here, the motion was not served on the clerk, secretary, president, presiding officer, or other head of the County. It was served on Shasta County without addressing service to anyone in particular. Docket 18. And, service on the County's counsel was improper, unless the attorney agreed to accept service. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The court has no evidence that the attorney agreed to accept service on behalf of the County.

Lastly, even if the motion had been served properly, the court is perplexed about how it can avoid a judicial lien that is based on an expired judgment.

Cal. Civ. Proc. Code § 683.020(c) prescribes that "[e]xcept as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) [a]ny lien created by an enforcement procedure pursuant to the judgment is extinguished."

The subject judgment was entered against the debtors in favor of County of Shasta for the sum of $55,078.28 on April 19, 1999. The abstract of judgment was recorded with Shasta County on May 6, 1999. That lien attached to the debtor's residential real property in Redding, California.

As it has been more than 10 years since entry of the judgment giving rise to the lien, and there is no evidence that the judgment has been renewed, the lien has been extinguished.

40. 14-20061-A-7 ANNE MAHONY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-3 — 8-25-14 [33]

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

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,705 in fees and $24.08 in expenses, for a total of $3,729.08. This motion covers the period from June 12, 2014 through August 15, 2014. The court approved the movant's employment as the trustee's attorney on August 18, 2014. In performing its services, the movant charged hourly rates of $175, $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 the documents pertaining to the debtor's loan to her daughter, (2) negotiating settlement with the debtor's daughter over her repayment of the loan, (3) preparing and prosecuting motion for approval of the settlement, and (4) preparing and filing employment and compensation motions.

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

41. 14-24264-A-7 MAGDALINE MARZO — MOTION TO AVOID JUDICIAL LIEN
ADR-1
VS. UNIFUND CCR PARTNERS — 8-12-14 [19]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Unifund CCR Partners without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

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

42. 14-26869-A-7 IGOR/PAOLA AVANTO — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1
BANK OF AMERICA, N.A. VS. — 8-13-14 [13]

Final Ruling: This motion for relief from the automatic stay has been set for

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2006 Winnebago RV. The movant has produced evidence that the vehicle has a value of $41,510 and its secured claim is approximately $61,437.

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 August 6, 2014. And, the debtors have surrendered the vehicle to the movant. 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.

43. 12-20874-A-7 MARK/JUANITA BALLARD — MOTION TO RECONVERT CASE TO CHAPTER 11
DEF-8 — 8-27-14 [183]

Final Ruling: The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 184 at 1-2. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

44. 12-36177-A-7 EARL FAVINGER
DNL-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-20-14 [75]

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

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $8,747.50 in fees and $125.67 in expenses, for a total of $8,873.17. This motion covers the period from November 5, 2012 through August 12, 2014. The court approved the movant's employment as the trustee's attorney on November 8, 2012. In performing its services, the movant charged hourly rates of $75, $150, $175, $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) assisting the trustee in the review and evaluation of the debtor's business interests, (2) responding to a motion to abandon the businesses, (3) attending court hearings, (4) preparing and prosecuting a motion for accounting and turnover of the businesses, (5) communicating with the debtor's attorney about turnover issues, (6) negotiating sale of the estate's interests in the businesses to the debtor, (7) preparing the sale agreement, (8) preparing and prosecuting a motion to sell the businesses, (9) advising the trustee about the general administration of the estate, 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.

45. 11-35193-A-7 J/MARIA CARDENAS
HCS-2

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-22-14 [150]

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

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $15,000 in fees and expenses, reduced from $24,193.50 in fees and $798.47 in expenses. This motion covers the period from August 24, 2011 through the present. The court approved the movant's employment as the trustee's attorney on September 6, 2011. In performing its services, the movant charged hourly rates of $195, $225, $250, $275 and $295.

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 the schedules and statements, (2) analyzing the debtor's exemption claims, (3) negotiating and preparing multiple stipulations for extension of the time for objection to the debtor's exemptions, (4) reviewing and opposing six conversion motions filed by the debtors, (5) advising the trustee about the turnover of the debtors' real property in Oakland, California, (6) preparing and prosecuting a motion for turnover of that real property, (7) communicating with the debtors about their homestead exemption in the real property in Oakland, California, (8) negotiating sale of the real property in Oakland, California with the debtors, (9) preparing sale and compromise agreement between the estate and the debtors, (10) preparing a motion for extension of time to object to exemptions, (11) advising the trustee about the general administration of the estate, and (12) 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.

46. 14-24993-A-7 TIMOTHY MILLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 8-11-14 [13]
STATE FARM BANK, FSB VS.

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

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

The movant, State Farm Bank, seeks relief from the automatic stay as to a real property in Bangor, California.

Given the entry of the debtor's discharge on September 16, 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 $192,014 and it is encumbered by claims totaling approximately $244,147. The movant's deed is in first priority position and secures a claim of approximately $215,316.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 8, 2014.

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

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

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

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

47. 14-27997-A-7 RICHARD SANTOS AND KAREN — MOTION TO
HDR-1 ENG — AVOID JUDICIAL LIEN
VS. CAPITAL ONE BANK (USA), N.A. — 8-21-14 [12]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent claimant 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 the approximate amount of $3,286.02 on July 19, 2012, in favor of Capital One Bank. Pursuant to the judgment, a writ of execution and an earnings withholding order were issued, resulting in the Sacramento County Sheriff levying $1,768.99 from Debtor Karen Eng's employer, Genentech U.S.A., Inc., prior to the petition filing date of August 5, 2014. Those funds are currently held by the Sacramento County Sheriff.

The debtors are seeking to avoid the lien that led to the levy of the funds.

The lien will be avoided pursuant to 11 U.S.C. § 522(f)(1)(A). The debtors have listed the funds, "[a]pproximately $2,000," in their Amended Schedule B. Docket 18. The debtors claimed an exemption of $2,500 in the levied funds pursuant to Cal. Code Civ. Proc. § 703.140(b)(5) in their Amended Schedule C. Docket 18.

The respondent holds a judicial lien created by the issuance of a writ of execution for the levy of the funds. 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 funds and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).