**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**November 3, 2014 at 10:00 a.m.**

---

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

**3, 8, 9, 10, 13, 14**

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

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

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

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

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

**IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER.**

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 1, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 17, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 24, 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. 09-33313-A-7 WILLIAM DRYSDALE — MOTION TO
13-2124 WPD-4 — SET ASIDE
DRYSDALE V. U.S. DEPT. OF EDUCATION — 10-2-14 [58]

**Tentative Ruling:** The motion will be denied.

The plaintiff and debtor in the underlying bankruptcy case, William Drysdale, asks the court for relief from its February 20, 2014 order granting a motion for summary judgment by the defendant, United States Department of Education, and the judgment entered pursuant to that motion. Dockets 41 & 47.

The motion will be denied. The motion makes no attempt to establish that its timing is reasonable. The motion says little or nothing new that might cause the court to reconsider its order and judgment. The motion makes no mention of Rule 60(b) and the reasons for reconsideration under that rule.

Fed. R. Civ. P. 60(b), 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).

"[R]evisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original summary judgment motion was briefed' is likewise inappropriate." Van Skiver at 1243.

This motion will be denied for five reasons.

First, it does not address whether it is being brought within reasonable time. The court granted the defendant's summary judgment motion on February 20, 2014. Docket 47. The instant motion was filed only on October 2, 2014, over seven months after entry of the February 20, 2014 order.

This motion also does not explain why the plaintiff's delay of approximately seven months to file this motion is reasonable, especially in light of the fact that the court entered a judgment in favor of the defendant on February 20, 2014, based on that February 20 order. Dockets 47 & 48.

Second, the plaintiff offers only one reason to justify setting aside the order and the judgment. That reason is without merit. The plaintiff contends:

"William Drysdale, Plaintiff herein, requests that the Court set aside the Summary Judgment granted to Defendant U.S. Department of Education on February 18, 2014, on the following grounds:

:Plaintiffs cross-motion for summary judgment made on February 18, 2014 was dismissed for procedural inadequacies, thereby preventing Plaintiff from fully developing his arguments on the substantive merits of his case."

Docket 58 at 2.

In other words, the plaintiff argues that the court should set aside the order because the court dismissed the plaintiff's summary judgment for "procedural inadequacies." The plaintiff asserts that the court granted the defendant's motion based on the dismissal of his motion, implying that the court granted the defendant's motion on a procedural deficiency. This is not true.

The plaintiff's summary judgment motion was separate and independent from the defendant's summary judgment motion. This required the plaintiff to respond separately to the defendant's motion.

The plaintiff was the first to file a motion for summary judgment, on August 20, 2013. Dockets 19 & 20. But, that motion was never heard by the court because the plaintiff never set it for a hearing. The defendant then filed its own summary judgment motion on January 17, 2014. Docket 23. That motion was set for hearing on February 18, 2014. Docket 24.

The plaintiff then refiled his summary judgment motion, on January 27, 2014. The plaintiff set this summary judgment motion for a hearing on February 18, 2014. Docket 34. The court dismissed that motion as follows:

"*Final Ruling: The motion will be dismissed without prejudice.*

"*Although the movant is without an attorney, he is a licensed attorney in the State of Montana and is authorized to practice law before the Ninth Circuit Court of Appeals and the United States District Court for the Northern District of California.*

"*Te* [*sic*] *motion will be dismissed because the motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service.* <u>*See*</u> *Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.*

"*The court has been unable to locate a proof of service for the motion.*

"*Second, the motion will be dismissed because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Docket 34.*

"*Third, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion does not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the*

*motion.*

"*Finally, the motion will be dismissed because it is not accompanied by a separate statement of undisputed facts, as required by Local Bankruptcy Rule 7056-1(a).*"

Docket 39.

Even thought the plaintiff had moved for summary judgment, he had an obligation to respond to the defendant's motion in writing within 14 days prior to the hearing set for the defendant's motion. Local Bankruptcy Rule 9014-1(f)(1); Docket 24 at 2 (notice of hearing for the defendant's summary judgment motion informing the plaintiff that "[o]pposition, if any, to the granting of the motion shall be in writing and served and filed with the court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing").

The plaintiff never filed an opposition or otherwise responded to the defendant's motion. See Dockets 23-39. The court cannot excuse or ignore this, especially given the fact that the plaintiff is a licensed attorney. As noted: "The plaintiff is a licensed attorney in the State of Montana and he is also authorized to practice law in California before the Ninth Circuit Court of Appeals and before the United States District Court for the Northern District of California. Docket 27 at 10-11." Docket 41 at 2.

Thus, the plaintiff waived his right to contest the defendant's motion by when he failed to file a written response to it. See Local Bankruptcy Rule 9014-1(f)(1)(B). And, the plaintiff has not addressed in this motion why he failed to file a response to the defendant's motion for summary judgment.

Moreover, the court did not grant the defendant's motion because it had dismissed the plaintiff's motion or because the defendant had failed to file a response to it. The court adjudicated the defendant's motion on the merits. The court considered and addressed each of the Brunner factors in its ruling granting the defendant's motion. See Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987); Docket 41 at 2-5.

Even though the court dismissed the plaintiff's summary judgment motion and even though that motion was unsupported by admissible evidence, the court considered the motion in granting the defendant's summary judgment motion. Even though not labeled as such, the court treated the plaintiff's motion as opposition/response to the defendant's summary judgment motion. The court held:

"*The plaintiff has no legal dependents. Although unemployed at this time, the plaintiff has - according to his own pleadings - a monthly gross income of $3,288.64 ($39,463.68 annually). Docket 30 at 5. The monthly income consists of:*

*- $1,959 from the Social Security Administration,*
*- $1,034.50 on account of his IRS pension,*
*- $55.45 of income from an union, and*
*- $239.69 from the Irish Government Old Age Pension system.*

*Docket 30 at 5.*

"*The plaintiff's monthly expenses - also according to his own pleadings - are $3,630.67 ($43,568.04 annually). Docket 30 at 5-6. They include:*

*- home mortgage, $1,219,*
*- homeowner's insurance, $60,*
*- water and garbage, $90,*
*- home repairs, $60,*
*- food, $400,*
*- medicines, $185,*
*- telephone land line and internet, $70,*
*- cell phone, $40,*
*- laundry and dry cleaning, $60,*
*- clothing, $100,*
*- family support, $250,*
*- entertainment, $100,*
*- automobile payment, $350,*
*- automobile insurance, $160 (while Docket 30 at 8 says that insurance is only $100 a month, the court has taken into account the $160 figure),*
*- gasoline, $120 (while Docket 30 at 8 says that gasoline is only $60 a month, the court has taken into account the $120 figure),*
*- savings, $125,*
*- estimated federal and state income taxes, $100,*
*- $141.66 monthly or $1,700 annually for dental checkups ($600 annually), Montana Bar dues ($500 annually), continuing legal education ($350 annually), and San Francisco Bar Association dues ($250 annually).*

*Docket 30 at 5-6."*

Docket 41.

Docket 30 is the plaintiff's summary judgment motion.

Hence, not only that the court did not grant the defendant's motion because it had dismissed the plaintiff's motion, the court considered the plaintiff's motion to reach a result on the merits of the defendant's motion.

Third, the instant motion makes no mention of Fed. R. Civ. P. 60(b). It makes no attempt to brief Rule 60(b) and its applicability to the relief sought by the plaintiff. The court will not speculate about what arguments the plaintiff might make under Rule 60(b).

Fourth, the plaintiff appeared at the February 18 hearing on the defendant's summary judgment motion and had the opportunity to argue the merits of the defendant's motion. Docket 41 at 1. Even though the plaintiff had not filed a response to the defendant's motion, it allowed the plaintiff to argue the merits of the defendant's motion even though Local Bankruptcy Rule 9014-1(f)(1)(B) prohibits parties from being "heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed."

Fifth, even in the absence of the above deficiencies, the court cannot reconsider the granting of the defendant's summary judgment motion because the subject motion is unsupported by evidence or admissible evidence. The subject motion, Docket 58, contains numerous factual assertions that are unsupported by any evidence. For instance, the plaintiff's educational history, his assertions of having searched for work, his efforts to mitigate expenses, and his need for a brand new vehicle, are not supported by a declaration executed by the plaintiff under the penalty of perjury.

More, even if some of the facts are supported by the plaintiff's exhibits attached to the motion (Docket 58), the court has been unable to locate a declaration from the plaintiff authenticating the lengthy exhibits attached to

the motion and found in Docket 58. This motion is opposed by the defendant and the court cannot ignore the absence of admissible evidence. See Local Bankruptcy Rule 9014-1(d)(6).

In summary, this motion will be denied because it only attempts to reargue the issues adjudicated by the court in connection with the defendant's summary judgment motion, without offering any basis for reconsideration. The motion raises the issues already addressed by the court in its ruling on the defendant's summary judgment motion, Docket 41. Also, the motion is devoid of evidence or admissible evidence, further compelling this court to deny it. The motion will be denied.

2. 14-24839-A-7 KENNETH/ALICIA UNG — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 10-3-14 [28]

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

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

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

As to the estate, the analysis is different. The property has a value of $500,000 and it is encumbered by claims totaling approximately $392,322. The movant's deed is in third priority position and secures a claim of approximately $101,161. This leaves approximately $107,677 of equity in the property. Docket 32.

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

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

The movant has an equity cushion of approximately $101,677. This equity cushion does not permit the court to conclude that the movant's interest in the property is inadequately protected. Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied without prejudice as to the estate.

3. 14-30053-A-7 WALTER FLETSCHER
DMB-1

MOTION TO
EXTEND AUTOMATIC STAY O.S.T.
10-27-14 [10]

**Tentative Ruling:** The motion will be granted.

The debtor is asking the court to extend the automatic stay with respect to all creditors. The debtor filed one prior bankruptcy case - a chapter 7, Case No. 14-29042 - which was dismissed only 12 days prior to the filing of the instant case.

Preliminarily, the court is perplexed about why the debtor waited 19 days after this case was filed to file this motion, when 11 U.S.C. § 362(c)(3)(B) requires the hearing on this motion to be "completed before the expiration of the 30-day period" of 11 U.S.C. § 362(c)(3)(A) and this case was filed 12 days after the prior case was dismissed.

The debtor's counsel had sufficient time to prepare this motion and file it with or shortly after this case was filed.

The debtor's prior case was filed on September 8, 2014. The case was dismissed on September 26, 2014 due to the debtor's failure to file the means test statement and the attorney's disclosure statement. This case was filed 12 days later, on October 8, 2014.

Even though this case was filed on October 8, the debtor did not file this motion until October 27, in conjunction with a request for an order shortening time, asking that the hearing on the motion be held on November 3. Dockets 10 & 14. If the debtor had filed this motion along with or shortly after filing this case on October 8, he would not have had to apply for an order shortening time.

The period between October 8 and November 3 is 26 days, giving the debtor sufficient time to file and serve the motion at least 14 days prior to the November 3 hearing, and even without counting the 12 days that lapsed between the dismissal of the prior case and the filing of this one. Local Bankruptcy Rule 9014-1(f)(2) (requiring only 14 days' notice of motions brought under that rule).

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (11, 12 or 13) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

11 U.S.C. § 362(c)(3)(B) and (C) further provide that:

"(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

**(C) for purposes of subparagraph (B), a case is presumptively filed not in good**

**faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—**

**(i) as to all creditors, if—**

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

**(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—**

**(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);**

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

**(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—**

**(aa) if a case under chapter 7, with a discharge; or**

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor."

The debtor then may seek a continuation of the stay beyond the original 30-day period if:

- a motion is filed,
- there is notice and a hearing,
- the hearing is held before the expiration of the original 30 day period, and
- the debtor proves that the filing of the later case is in good faith as to the creditors to be stayed.

The debtor bears the ultimate burden of persuasion as to each of the foregoing prongs. In re Elliot-Cook, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006) (citing In re Castaneda, 342 B.R. 90, 94 (Bankr. S.D. Cal. 2006)).

Under the statute, a rebuttable presumption that the later case was not filed in good faith will arise if:

(1) the debtor had more than one case pending in the preceding year;

(2) the first case was dismissed because the debtor failed to:
(a) file or amend the petition or other documents without substantial excuse;

(b) provide court-ordered adequate protection; or
(c) perform the terms of a confirmed plan; **or**

(3) there is no substantial change in the debtor's affairs and no other reason to believe the case will result in a chapter 7 discharge.

In re Elliot-Cook, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006) (citing In re Castaneda, 342 B.R. 90, 94 (Bankr. S.D. Cal. 2006)).

The debtor's prior case was dismissed due to the fact that the means test statement and the attorney's disclosure statement were never filed. The debtor contends that the secretary for the debtor's counsel "accidently filed a draft of the remainder of the documents that were due instead of the final drafted documents that were to be filed September 22, 2014." Docket 10 at 1-2. "Through inadvertence, the secretary filed the schedules which did not include the means test and attorney disclosure statement and with the hand-written corrections and annotations from the September 19, 2014 meeting the debtor had with the attorney." Docket 12 at 2.

As the debtor did not file the means test form, as required by 11 U.S.C. § 707(b)(2)(C), the presumption that the subject case was filed not in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). However, under 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa), negligence by the debtor's counsel is a substantial excuse negating the presumption of section 362(c)(3)(C)(i)(II)(aa).

Here, the negligence of the debtor's counsel's secretary in not filing the means test and attorney's disclosure statements is negligence of the debtor's counsel. Such negligence then is substantial excuse for purposes of section 362(c)(3)(C)(i)(II)(aa). Thus, the presumption that this case was filed not in good faith under that provision has been rebutted.

Further, the court must examine also the presumptions arising under 11 U.S.C. § 362(c)(3)(C)(i)(I) and (III) as well, given that subsections 362(c)(3)(C)(i)(I) - (III) are in the disjunctive.

11 U.S.C. § 362(c)(3)(C)(i)(I) does not apply because the debtor has not had more than one prior cases pending within the preceding one-year period.

"A presumption of bad faith under section 362(c)(3)(C)(i)(III) arises if the court finds that there has been no substantial change in the debtor's financial affairs since his previous case. The same presumption arises if the Court determines that any confirmed plan will not be fully performed." In re Washington, 443 B.R. 389, 392 (Bankr. D.S.C. 2011). Under 11 U.S.C. § 362(c)(3)(C)(i)(III)(aa), the presumption arises if the court determines that a later chapter 7 cases will be concluded with a discharge.

Here, both the prior and present cases are chapter 7 proceedings. While the motion says nothing precise about changes to the debtor's financial condition between the two cases, the change offered seems to be that the debtor has filed the required documents in this case. A review of those documents reveals nothing suggesting it will concluded without a discharge.

4. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-2
VS. DITCH WITCH EQUIPMENT CO., INC. — 10-3-14 [41]

**Tentative Ruling:** The motion will be denied.

A judgment was entered against the debtor in favor of Ditch Witch Equipment Co., Inc. for the sum of $50,127.95 on November 2, 2004. The abstract of judgment was recorded with Sacramento County on January 20, 2005. That lien attached to the debtor's residence in Sacramento, California.

The motion will be denied because the debtor has not established his entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property had a value of $240,000 as of the date of the petition. The unavoidable liens totaled $127,000 on that same date, consisting of a single mortgage in favor of Washington Mutual. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $150,000 in Schedule C.

However, the motion makes no effort to establish that the debtor is entitled to a $150,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3). The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

5. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-3
VS. CAVALRY PORTFOLIO SERVICES, L.L.C. — 10-3-14 [46]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Cavalry Portfolio Services, LLC for the sum of $38,068.39 on May 24, 2005. The abstract of judgment was recorded with Sacramento County on July 19, 2005. That lien attached to the debtor's residential real property in Sacramento, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established his entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property had a value of $240,000 as of the date of the petition. The unavoidable liens totaled $127,000 on that same date, consisting of a single mortgage in favor of Washington Mutual. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $150,000 in Schedule C.

However, the motion makes no effort to establish that the debtor is entitled to a $150,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3). The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

6. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-4
VS. UNIFUND CCR PARTNERS — 10-3-14 [51]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of $11,916.17 on July 27, 2006. The abstract of judgment was recorded with Sacramento County on September 5, 2006. That lien attached to the debtor's residential real property in Sacramento, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established his

entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property had a value of $240,000 as of the date of the petition. The unavoidable liens totaled $127,000 on that same date, consisting of a single mortgage in favor of Washington Mutual. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $150,000 in Schedule C.

However, the motion makes no effort to establish that the debtor is entitled to a $150,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3). The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

7. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-5
VS. U.S. BANK, N.A.
10-3-14 [56]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of U.S. Bank for the sum of $41,894.86 on March 9, 2005. The abstract of judgment was recorded with Sacramento County on April 21, 2005. That lien attached to the debtor's residential real property in Sacramento, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established his entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property had a value of $240,000 as of the date of the petition. The unavoidable liens totaled $127,000 on that same date, consisting of a single mortgage in favor of Washington Mutual. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $150,000 in Schedule C.

However, the motion makes no effort to establish that the debtor is entitled to a $150,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3). The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

8. 10-25463-A-7 MICHAEL GIBSON AND JUDY MAYNE — MOTION TO EMPLOY
DNL-3
10-13-14 [39]

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

The motion will be granted.

The trustee is asking the court to employ nunc pro tunc as special counsel

Kershaw, Cutter & Ratinoff, LLP, the law firm which represented the debtor and the estate's interests in a personal injury litigation against Johnson & Johnson Services, Inc., et al. The sought compensation arrangement is a 40% contingency fee of any net recovery plus reimbursement of expenses. The proposed effective employment date is February 1, 2011.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The debtors did not disclose their interest in the litigation when this case was filed on March 5, 2010 because they apparently did not become aware of that interest until after this bankruptcy case was closed. Docket 15. After the debtors received chapter 7 discharge on June 21, 2010, the case was closed on June 25, 2010. The case was reopened on August 25, 2014 pursuant to a motion brought by the U.S. Trustee.

The personal injury action in question was commenced on February 8, 2011. It involved claims pertaining to a pre-petition prosthetic hip implant which was subject to a recall requiring a subsequent surgical procedure. Various tort claims were asserted by the debtors, including strict products liability and negligence. The action was eventually consolidated with approximately 4,000 other similar suits.

Kershaw did not learn of the instant bankruptcy case until after it had started working on consummation of the settlement of the litigation.

The court is satisfied with the trustee's and Kershaw's explanation about why the estate failed to obtain prior court approval of Kershaw's employment.

Kershaw provided valuable services for the estate, as it litigated the personal injury claims, eventually leading to a settlement agreement with the defendants, expected to generate $212,500 in settlement proceeds for the Part A Award portion of the settlement. Kershaw's services, as they pertain to this bankruptcy case and the chapter 7 estate, relate solely to the Part A Award portion of the settlement. The other portion of the settlement, the Part B Award, will be abandoned pursuant to a stipulation between the trustee and the debtors approved by this court. Dockets 54 & 55. The debtors' exemption in the Part A Award will be $40,000; Kershaw's fees solely from the Part A Award are expected to be $85,000 (40% of the $212,500 settlement); Kershaw's expenses are expected to be $2,125. The Part A Award of the settlement is expected to net $85,375 for the estate, whereas the unsecured claims are expected not to exceed $31,000.

The trustee has satisfied the nunc pro tunc approval standard under THC Financial. Kershaw's employment will be approved retroactively to February 1, 2011 on a 40% contingency fee basis. The employment will be approved.

| | | | |
|---|---|---|---|
| 9. | 10-25463-A-7<br>DNL-4 | MICHAEL GIBSON AND JUDY MAYNE | MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL<br>10-13-14 [45] |

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

The motion will be granted.

Kershaw, Cutter & Ratinoff, LLP, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $85,000 in fees and $2,125 in expenses, for a total of $87,125. The compensation relates solely to services provided in a personal injury litigation based on pre-petition claims brought by the debtors after they received their discharge and the case was closed on June 25, 2010. The services were provided from February 1, 2011 through and including September 29, 2014. The requested compensation is based on a 40% contingency fee basis.

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."

Kershaw provided valuable services for the estate, as it litigated the personal injury claims, eventually leading to a settlement agreement with the defendants, expected to generate $212,500 in settlement proceeds for the Part A Award portion of the settlement. Kershaw's services and compensation, as they pertain to this bankruptcy case and the chapter 7 estate, relate solely to the Part A Award portion of the settlement. The other portion of the settlement, the Part B Award, will be abandoned pursuant to a stipulation between the trustee and the debtors approved by this court. Dockets 54 & 55. The debtors' exemption in the Part A Award is $40,000; Kershaw's fees solely from the Part A Award are $85,000 (40% of the $212,500 settlement); Kershaw's expenses are $2,125. The Part A Award of the settlement is expected to net $85,375 for the estate, whereas the unsecured claims are expected not to exceed $31,000.

Kershaw's services consisted, without limitation, of: collecting, reviewing and summarizing medical records, preparing and filing a complaint, conducting and responding to discovery, preparing for and attending steering committee meetings pertaining to the consolidation and management of the action with another 4,000 similar cases, reviewing settlement papers and meeting with the debtors about the settlement, preparing and submitting claims into a nationwide settlement program.

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.

10. 10-25463-A-7 DNL-5 | MICHAEL GIBSON AND JUDY MAYNE | MOTION TO APPROVE COMPROMISE 10-13-14 [49]

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

The motion will be granted.

The trustee requests approval of the Part A Award of a settlement between the estate and the defendants in a previously unscheduled personal injury litigation based on pre-petition claims, initiated by the debtors after the initial closure of the case on June 25, 2010. The defendants in the litigation include Johnson & Johnson Services, Inc., et al.

This case was filed on March 5, 2010 and was closed on June 25, 2010, after the debtors received their discharge. The case was reopened on August 25, 2014 for the administration of the estate's interest in the claims. The personal injury action was commenced on February 8, 2011, pertaining to Judy Mayne's pre-petition hip replacement surgery. Pursuant to a settlement agreement, the debtors will be receiving two monetary awards, Part A Award and Part B Award. Part A Award is in the amount of $212,500. The debtors' Part B Award is still being processed but is expected to be $150,000. This motion pertains solely to the Part A Award. The trustee has entered into a stipulation with the debtors agreeing to abandon the Part B Award. The stipulation has been approved by this court. Dockets 54 & 55.

Under the terms of the Part A Award settlement, the personal injury action defendants have agreed to pay $212,500 to the debtors. Pursuant to the trustee's stipulation with the debtors, their exemption in the Part A Award settlement proceeds is $40,000. The attorney's fees and expenses for the attorney who represented the debtors in the personal injury litigation, Kershaw, Cutter & Ratinoff, LLP, total $87,125. This leaves $85,375 for the estate from the Part A Award settlement proceeds, whereas the unsecured claims are expected not to exceed $31,000. Surplus funds will be returned to the debtors.

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

stipulation compromise. That is, given that unsecured claims are expected to be paid in full, given that this is expected to be a surplus estate solely from administration of the net Part A Award settlement proceeds, given that the Part A Award portion of the settlement will allow the trustee to administer the estate quickly, and given the inherent costs, risks, delay and inconvenience of further litigation, the Part A Award portion of 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.

| | | | |
|---|---|---|---|
| 11. | 13-35475-A-7<br>DNL-8 | JOSE JIMENEZ AND MARIA GONZALEZ | MOTION FOR TURNOVER OF PROPERTY<br>10-6-14 [152] |

**Tentative Ruling:** The motion will be denied.

The trustee is asking the court to order the debtors to give the trustee and his professionals access to real property in Sacramento, California.

The motion will be denied as the court is granting the debtors' motion to convert the case to chapter 13.

| | | | |
|---|---|---|---|
| 12. | 13-35475-A-7<br>TOG-14 | JOSE JIMENEZ AND MARIA GONZALEZ | MOTION TO CONVERT CASE<br>9-29-14 [142] |

**Tentative Ruling:** The motion will be granted.

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

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

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

The debtors have produced evidence that supports monthly disposable income of $1,541.22.

The debtors have submitted pay stubs for Jose Jimenez for the period spanning April 20, 2014 to September 22, 2014, inclusive. Docket 146 Ex. B. Based on these pay stubs, Jose Jimenez's total gross income for this period is $21,053.68. Id. Subtracting total payroll deductions of $2,907.58, this leaves a total net income, for the period, of $18,146.10. Id. The net income is then divided by 22 weeks to compute an average weekly net income for the

period of $824.82. Id. Jose Jimenez's average monthly net income is calculated by multiplying $824.82 by 52 weeks and then dividing this sum by 12 months; the result is $3,574.23. Id.

The debtors have also submitted pay stubs for Maria Gonzalez for the period spanning April 25, 2014 to September 19, 2014, inclusive. Docket 146 Ex. C. Based on these pay stubs, Maria Gonzalez's total gross income for this period is $4,554.27. Id. Subtracting total payroll deductions of $596.32, this leaves a total net income for the period of $3,959.95. Id. Maria Gonzalez is paid biweekly so the net income is divided by 20 weeks to compute an average weekly net income for the period of $198.00. Maria Gonzalez's average monthly net income is calculated by multiplying $198.00 by 52 weeks and then dividing this sum by 12 months; the result is $857.99. Id.

Thus, the debtors have a monthly net income of $4,432.22. Docket 146. Ex. B and C. Amended Schedule J indicates that the debtors have monthly expenses totaling $2,891. Docket 148. Subtracting the debtor's monthly expenses of $2,891 from their monthly net income of $4,432.22 yields a disposable monthly income of $1,541.22. This is sufficient disposable income to make the proposed chapter 13 plan payments of $863 per month. Docket 146 Ex. B.

Moreover, the debtors' 20-year old son, Miguel Gonzalez, has submitted a declaration attesting to his willingness to contribute $500 per month towards the plan. Docket 145. Miguel Gonzalez has signed a declaration stating that he works an average of 30 hours a week, has been working at Calvintage Roofing since March 18, 2014, is willing to commit $500 a month toward the debtors' plan payments, for five years. Id. Miguel Gonzalez declares he has minimal monthly expenses consisting of $80 in automobile insurance and $40 in cellular telephone charges. Id.

Thus, the debtors meet the regular income eligibility requirement for chapter 13 relief.

Additionally, the debtors have noncontingent, liquidated, secured debt in an amount of less than $1,149,525 (actual amount is $127,065) and noncontingent, liquidated, unsecured debt in an amount of less than $383,175 (actual amount is $47,865). Dockets 1 & 82.

Finally, the debtors are offering to pay chapter 7 administrative expenses in the amount of $15,000, reflecting the expenses asserted by the chapter 7 trustee in connection with the debtors' last conversion motion. Docket 137 at 2.

Although the chapter 7 estate's expenses are no longer $15,000, the court considers the debtors' offer to pay the administrative expenses as existing as of the last conversion motion, as evidence of their good faith in seeking to convert the case to chapter 13. The court concludes then that the debtors are no longer seeking the conversion for an improper purpose or in bad faith.

Accordingly, the court will convert the case to chapter 7, provided the debtors pay via their chapter 13 plan all of the chapter 7 estate's allowed administrative expenses. Docket 160 at 2.

The court also expects the debtors to file another set of amendments of their Schedules I and J - consistent with the pay stubs submitted with the instant motion - no later than November 10, 2014.

13. 14-29182-A-7 LAURA OLSON FLORES — MOTION FOR RELIEF FROM AUTOMATIC STAY
KRO-1
JAMES THOMPSON VS. — 10-14-14 [18]

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

The motion will be granted.

The movant, James E. Thompson as trustee of The Thompson Family Trust and James J. Thompson as trustee of the Dennis M. Hauser 2009 Living Trust, seeks relief from the automatic stay as to real property in Lodi, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement on or about March 11, 2014. The movant served a 60-day notice to terminate tenancy on the debtor. The movant filed an unlawful detainer action on or about June 4, 2014. After the debtor filed a demurrer, the movant filed an amended unlawful detainer complaint on June 19, 2014. The debtor filed an answer to the amended complaint on July 15, 2014. An unlawful detainer trial date was set for August 19, 2014 and then was continued to September 4, 2014.

On or about August 13, 2014, the debtor and the movant entered into a stipulation for entry of an unlawful detainer judgment and for the debtor to vacate the property no later than 5:00 p.m. on September 14, 2014. In exchange, the movant agreed to dismiss the unlawful detainer action. The trial date was vacated due to the parties filing the stipulation with the state court on September 2, 2014. The debtor filed this bankruptcy case on September 12, 2014.

The movant seeks relief from stay to exercise rights under state law to obtain possession of the property.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from March 2014 until the present. And, the debtor's tenancy interest in the property terminated upon expiration of the 60-day notice served on the debtor pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go back to state court in order for that court to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor.

The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

No fees and costs 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.

14. 14-29383-A-7 DEBORAH VANDERZANDEN — MOTION TO AVOID JUDICIAL LIEN
RK-1
VS. CAPITAL ONE BANK (USA), N.A. — 10-2-14 [11]

**Tentative Ruling:** The motion will be granted in part.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $8,731.47 on August 15, 2014. The abstract of judgment was recorded with Sacramento County on September 11, 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 $117,201 as of the date of the petition. The unavoidable liens total $42,200.48 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $75,000 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 $0.52 of equity to support the judicial lien ($117,201 property value minus ($42,200.48 in unavoidable liens plus $75,000 of exemption)). Therefore, except to the extent of $0.52, 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).

***FINAL RULINGS BEGIN HERE***

15. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
JME-1 — 10-2-14 [719]
THE FORECAST GROUP, L.P. VS.

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

The motion will be granted.

The movant, K. Hovnanian Forecast Homes, Inc., K. Hovnanian Companies, Inc., and the Forecast Group, LP,, seeks relief from the automatic stay to proceed with its construction defect cross-claims against the debtor. Recovery will be limited to available insurance coverage.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance coverage, the court concludes that cause exists for the granting of relief from the automatic stay.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage.

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

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

16. 14-26728-A-7 EDWARD JIMENEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 9-30-14 [14]
WELLS FARGO BANK, N.A. VS.

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

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

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

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

As to the estate, the analysis is different. The property has a value of $208,209 and it is encumbered by claims totaling approximately $238,832. The movant's deed is the only encumbrance against the property.

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

17. 14-28729-A-7 LANIE WILLIAMS
PD-1
DEUTSCHE BANK NATIONAL TRUST CO. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-26-14 [10]

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

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

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

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

On December 30, 2013, the debtor filed a chapter 13 case (case no. 13-36152). But, the court dismissed that case on June 19, 2014 due to the debtor's failure to make plan payments. The debtor filed the instant case on August 28, 2014. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on September 27, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on September 27, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

18. 12-37632-A-7 JOSEPH/VALERIE GWERDER — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
GMR-3 — 9-26-14 [68]

**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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,207.50 in fees and $0.00 in expenses, for a total of $1,207.50. This motion covers the period from September 5, 2014 through September 25, 2014. The court approved the movant's employment as the estate's accountant on September 10, 2014. In performing its services, the movant charged an hourly rate of $345.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the preparation of estate tax returns.

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

19. 12-37632-A-7 JOSEPH/VALERIE GWERDER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-2 — 10-1-14 [74]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 $4,000 in total, reduced from $7,646.50 in fees and $496.46 in expenses (total of $8,142.96). This motion covers the period from April 10, 2013 through the present. The court approved the movant's employment as the trustee's attorney on April 18, 2013. See Dockets 42 & 57. In performing its services, the movant charged hourly rates of $225, $250, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the sale of a real property; (2) preparing and prosecuting a motion to sell the property, (3) negotiating with a creditor for the amendment of her proofs of claim, incorrectly designated as priority, (4) advising the trustee about the general administration of the estate, and (5) preparing and filing employment and compensation motions.

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

20. 14-27937-A-7 BETTY SMITH — MOTION TO COMPEL ABANDONMENT
PLC-1 — 10-3-14 [35]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to

oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. Docket 36. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. Docket 39. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

21. 14-24839-A-7 KENNETH/ALICIA UNG — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
OCWEN LOAN SERVICING, L.L.C. VS. — 10-3-14 [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 denied without prejudice in part and granted in part.

The movant, Ocwen Loan Servicing, seeks relief from the automatic stay as to a real property in Tolleson, Arizona.

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

As to the estate, the analysis is different. The property has a value of $140,000 and it is encumbered by claims totaling approximately $139,731.69. The movant's deed is the only encumbrance against the property. While this leaves approximately $268.31 of equity in the property, this cushion has been consumed by the accrual of additional interest since the filing of the motion.

Given the lack of equity, relief from stay as to the estate under 11 U.S.C. § 362(d)(2) is appropriate.

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

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

22. 13-23544-A-7 MICHAEL/ULANDA WILLIAMS
SSA-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-2-14 [41]

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

The motion will be granted.

Steven Altman, PC, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,110 in fees and $134 in expenses, for a total of $4,244. This motion covers the period from March 20, 2014 through the present. The court approved the movant's employment as the trustee's attorney on April 7, 2014. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing the debtors' petition documents, (2) preparing a settlement agreement with the debtors about their purchase of the nonexempt equity in a real property in Stockton, California, (3) preparing and filing papers to obtain court approval of the settlement, (4) communicating with the trustee and counsel for the debtors, (5) advising the trustee about the general administration of the estate, and (6) preparing and filing employment and compensation motions.

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

23. 14-29045-A-7 WILLIAM/GERALDINE ACKERMAN
KMT-1
BANK OF THE WEST VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-3-14 [11]

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

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay as to a commercial real property in Mount Shasta, California. The movant has produced evidence that the property has a value of $475,000 and it is encumbered by claims totaling approximately $842,661. Docket 13 at 1-2. The movant's deed is in first priority position and secures a claim of approximately $474,207.28.

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 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 be ordered waived.

| | | |
|---|---|---|
| 24. | 14-27053-A-7 RUSSELL SANDERS<br>CJO-1<br>THE BANK OF NEW YORK MELLON VS. | MOTION FOR<br>RELIEF FROM AUTOMATIC STAY<br>10-7-14 [12] |

**Final Ruling:** The movant has provided only 27 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). 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.

25. 14-25963-A-7 LOUIS/JOYCE MILLIGAN — MOTION TO AVOID JUDICIAL LIEN
MWB-1 — 9-29-14 [17]

**Final Ruling:** The motion will be dismissed without prejudice because the motion was not served on the respondent creditor, the CIT Group/Sales Financial, Inc. Fed. R. Bankr. P. 7004(b)(3) 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."

While the debtor served the creditor's attorney, Harlan M. Reese, 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 notes that although the motion refers to an abstract of judgment that was recorded in Shasta County, that recorded abstract of judgment is not in the record. The only attachments to the motion are an application for renewal of judgment and a notice of renewal of judgment. Hence, the motion's references to a recorded abstract of judgment are inadmissible hearsay. Fed. R. Evid. 802.

26. 14-24264-A-7 MAGDALINE MARZO — MOTION TO AVOID JUDICIAL LIEN
ADR-2
VS. UNIFUND CCR PARTNERS — 9-24-14 [29]

**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 Unifund CCR Partners for the sum of $15,063.87 on April 12, 2013. The abstract of judgment was recorded with Sacramento County on November 15, 2013. 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 $187,858 as of the date of the petition. The unavoidable liens total $183,100 on that same date, consisting of a single mortgage in favor of Nationstar Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $11,915.02 in Schedule C. Docket 14.

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

27. 14-29167-A-7 JENNIFER CANNON — ORDER TO SHOW CAUSE 10-9-14 [25]

**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 filed an Amended Master Address List on September 25, 2014, but did not pay the $30 filing fee. However, the debtor paid the fee on October 16, 2014. No prejudice has resulted from the delay.

28. 14-29183-A-7 DEBRA JOHNSON
JFL-1
SETERUS, INC. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-3-14 [10]

**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, Seterus, Inc., seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $279,000 and it is encumbered by claims totaling approximately $296,622. 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.

29. 14-27986-A-7 MARIA CAMACHO — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 9-24-14 [11]
BANK OF AMERICA, N.A. VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Foresthill, California. The property has a value of $293,243 and it is encumbered by claims totaling approximately $493,482. See Schedule D. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 2, 2014.

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

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

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

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

30. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-1
VS. WELLS FARGO BANK NEVADA — 8-12-14 [86]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied without prejudice.

The hearing on this motion was continued from September 22, 2014 in order for the debtor to supplement the record. The debtor has filed additional papers in support of this motion but has failed to address all of the issues previously identified by the court.

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 Amended Schedule A, the property consists of two separate commercially zoned real properties located at 8320 Hwy. 99 East Los Molinos, CA 96055. Amended Schedule A identifies one of the real properties as 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. 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 two properties also have separate assessor parcel numbers. Docket 12, Schedule A.

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 without prejudice

In its September 22 ruling for the motion, the court stated "[s]econd, 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."

Although the debtor has filed an Amended Schedule A separately listing and valuing the two real properties (Docket 143), the debtor has not filed an Amended Schedule C changing his exemption to apply to only one of the two real properties. The debtor has claimed an exemption of $175,000 under Cal. Civ. Proc. Code § 704.730 as to both real properties. Docket 13. The debtor cannot claim an exemption under Cal. Civ. Proc. Code § 704.730 in two real properties.

Cal. Civ. Proc. Code § 704.730 provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

As Cal. Civ. Proc. Code § 704.730(a)(1)-(3) permit exemptions only in a homestead that satisfies the residency requirements of that statute, the debtor can claim an exemption only in one of the two properties listed in Amended Schedule A (Docket 143).

Therefore, the debtor must amend his Schedule C once again, to comply with the requirements of Cal. Civ. Proc. Code § 704.730(a)(1)-(3), *i.e.*, make the exemption apply to one real property upon which the debtor resides.

Finally, as stated in the court's September 22 ruling:

"[T]he 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 without prejudice.

31. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-2
VS. CITIBANK (SOUTH DAKOTA), N.A. — 8-12-14 [92]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be 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 November 3, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

32. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-3
VS. GEORGE/BETTY HARMS — 8-12-14 [98]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be 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 November 3, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is incorporated here by reference.

33. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-4
VS. BETTY SHEASGREEN — 8-12-14 [104]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be 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 November 3, 2014 ruling on the debtor's lien avoidance motion, DCN DMB-1, which ruling is

incorporated here by reference.

34. 14-22787-A-7 JOSEPH EITZEN — MOTION TO AVOID JUDICIAL LIEN
DMB-5
VS. BUTTE COUNTY CREDIT BUREAU — 8-12-14 [110]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be 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 November 3, 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.

Cal. Civ. Proc. Code § 683.020(c) provides 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 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.

35. 14-27194-A-7 MONIQUE HOUK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1
WELLS FARGO BANK, N.A. VS. — 9-24-14 [19]

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

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

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

Given the entry of the debtor's discharge on October 28, 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 $163,000 and it is encumbered by claims totaling approximately $252,317. The movant's deed is the only mortgage against the property, totaling approximately $249,317.

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 September 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.