UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 17, 2014 at 10:00 a.m.

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

2, 3, 4, 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. 14-30908-A-7 RENEE MURRY — MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 11-4-14 [10]
CSS-1
SAM ISHAQ VS.

Tentative Ruling: The motion will be granted.

The movant, Sam Ishaq, seeks relief from the automatic stay as to a real property in Fairfield, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in September 2013. On August 22, 2014, the movant served a three-day notice to pay or quit on the debtor. After expiration of the notice, the movant filed an unlawful detainer action on August 26, 2014. The debtor filed this bankruptcy case on November 4, 2014.

The movant seeks relief from stay to exercise rights under state law to obtain possession of the property, including continuation of the pending unlawful detainer action.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. Even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay rent. And, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice that was served on the debtor and expired 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.

2. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE STIPULATION FOR RELIEF FROM AUTOMATIC STAY 10-16-14 [737]
LMW-1
PARAMONT HOMES, INC. VS.

Tentative Ruling: The motion will be granted in part.

The movant, JCW Cypress Home Group, J.C. Williams Company, and Paramont Homes, Inc., seeks approval of a stipulation between the movant and the debtor, modifying the automatic stay to allow the movant to prosecute its claims in a pending state court action against the debtor. The stipulation is executed by the debtor but not the trustee. Docket 737, Ex. A at 2. Recovery on the claims will be limited to available insurance coverage, if any.

As the stipulation limits the movant's recovery on the claims to available insurance coverage, the recovery will not affect the debtor or the debtor's property that is now property of the estate. Docket 737, Ex. A at 2. Hence, the stipulation will be approved and the motion will be granted but given the failure of the trustee to join in the stipulation, it is not binding the trustee or the estate.

3.	14-24416-A-7 CJO-1 PHH MORTGAGE CORPORATION VS.	LELAND COMBS AND MICHAEL CHINN	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-31-14 [37]

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

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

The movant, PHH Mortgage Corporation, seeks relief from the automatic stay as to a real property in Stewartville, Minnesota.

Given the entry of the debtor's discharge on July 30, 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 $94,500 and it is encumbered by claims totaling approximately $97,382. The movant's claim is the only mortgage against the property, holding a claim of approximately $94,180. The encumbrances also include outstanding property taxes totaling $1,702.

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

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

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.

4. 14-30320-A-7 PETER WOLK
MDC-2

MOTION TO
VACATE DISMISSAL OF CASE O.S.T.
11-6-14 [22]

Tentative Ruling: The motion will be granted.

The debtor is asking the court to vacate the November 4, 2014 dismissal of the case. Docket 16. The case was dismissed because the debtor had failed to file the means test form. The debtor argues that excusable neglect warrants the setting aside of the order dismissing the case under Fed. R. Civ. P. 60(b)(1).

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."

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

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

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

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

The subject motion has been brought within reasonable time after entry of the order dismissing the case. This case was filed on October 17, 2014. The court had given the debtor until and including October 31, 2014 to file all schedules and statements not filed on the petition date. Docket 3. Due to the debtor's failure to file the means test form by the October 31 due date, this court dismissed the case on November 4. Docket 16.

As the subject motion was filed on November 6 - only two days after entry of the order dismissing the case - the court is satisfied that the motion has been brought timely within the meaning of Rule 60(c).

Turning to the merits of excusable neglect, the reason for the delay was the debtor's neglect in filing the means test form timely. That was the sole reason for the dismissal of the case. The debtor had sufficient and reasonable

control over the timely filing of the means test form. The debtor filed this bankruptcy case and the debtor is responsible for the filing of its petition documents, including the means test form. See 11 U.S.C. § 521(a), (b) and 11 U.S.C. § 707(b)(2)(C); see also Fed. R. Bankr. P. 1007(b), (c) and 2016(b).

Nevertheless, the length of delay is minimal and its effect on the proceedings is nonexistent. As mentioned above, the debtor filed this motion only two days after entry of the dismissal order.

And, the initial meeting of creditors has not taken place yet. It is set to take place on December 9, 2014, approximately three weeks after the court is set to hear this motion, on November 17. In addition, the last day for filing complaints under 11 U.S.C. § 523 and 727 is set for February 9, 2015, approximately one week short of three months after the court is set to hear this motion. The deadline for dismissal motions under 11 U.S.C. § 707(b) is also set for February 9, 2015. See 11 U.S.C. § 707(b), Fed. R. Bankr. P. 1017(e)(1), 9006(a)(1)(C).

Moreover, the debtor has been cooperating with the trustee in the production of documents requested by her and she supports the setting aside of the dismissal order. Docket 25 ¶ 9.

Hence, the debtor's neglect in filing the means test form timely will not hinder the trustee's timely administration of the estate or the creditors in protecting their rights under the Bankruptcy Code and Rules. There is no prejudice to the estate or the creditors.

Conversely, this appears to be an asset case that will generate a return to unsecured creditors. Docket 25 ¶ 9.

Finally, the court does not have evidence that the debtor has acted in any way other than in good faith, as relating to the neglect in filing the means test form and filing and prosecuting this motion. For instance, no prior incidents of similar neglect by the debtor or his counsel exist.

In balancing the equities, then, setting aside of the dismissal order is warranted under Rule 60(b)(1). The motion will be granted. The means test form shall be filed with the court no later than November 19, 2014.

5. 11-44723-A-7 ROBERT BROWN — MOTION TO APPROVE COMPROMISE
DNL-7 — 10-16-14 [345]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between this estate and the related bankruptcy estate of Deuces Wild, Inc., on one hand, and Philip and Linda Hawkins, on the other hand. The settlement resolves proofs of claim filed by the Hawkins against both estates.

Creditors Jamey and John Robinson oppose the motion, arguing that the settlement is unfair and inequitable, given that:

- the Hawkins did not comply with this court's instructions to litigate the state court action first and then proceed with the pending nondischargeability adversary proceeding;

- the Hawkins settled their nondischargeability claim with the debtor, who agreed to pay them $90,000 in full satisfaction of the claim;

- this court had ruled that the Hawkins' claim "would be limited to the amount of debt adjudicated nondischargeable;"

- the Hawkins dismissed the pending state court action;

- "[p]ermitting the Hawkins to assert two general unsecured claims in the amount of $900,000 for 'contract damages' would amount to double recovery and would constitute unjust enrichment;"

- the Hawkins' claims against the estates are time barred.

The Hawkins' proof of claim in the Deuces Wild case is for $1,155,063.40 and it is based on breach of contract, unjust enrichment, and restitution state court claims, where they are seeking rescission, specific performance, other injunctive relief, money judgment and the appointment of a receiver. Case No. 12-29776, POC 3, Ex. B.

The Hawkins' proof of claim in the instant case is for $2,677,678.69 and it is based on fraud and breach of contract claims. POC 11.

Under the terms of the compromise, as consideration for the Hawkins' proofs of claim in the two bankruptcy cases, the Hawkins will be allowed "a $900,000 general unsecured claim" against both estates. Any liens or encumbrances of the Hawkins against the assets of the two estates or resulting sales proceeds, will be disallowed. The estates and the Hawkins will execute mutual releases. This compromise is unrelated and has no bearing on the compromise between the debtor and the Hawkins over their 11 U.S.C. § 523 claim.

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 is unpersuaded by the arguments advanced by the Robinsons.

First, the court disagrees that the settlement provides for two $900,000 claims. The court's reading of the settlement agreement is that the Hawkins will have a single $900,000 claim that will be allowed in both bankruptcy cases as a general unsecured claim. In other words, satisfaction of one proof of claim in one of the cases will decrease the amount of the proof of claim in the other case.

Second, the Robinsons have misunderstood the court's instructions for the Hawkins to go back to state court to litigate the claims against the debtor. They were allowed to liquidate all their claims against the estate, including both dischargeable and nondischargeable portions. But, only the nondischargeable portion of the claims reduced to judgment is relevant to the Hawkins' litigation of the 11 U.S.C. § 523 claim against Robert Brown. That is

why the court told the Hawkins that their section 523 claim against Robert Brown would be limited to the amount of debt adjudicated nondischargeable.

And, it is only the section 523 claims that Robert Brown settled with the Hawkins. He did not settle their claims against the estates. The Hawkins then did not disobey instructions by settling the section 523 claim and dismissing the pending state court action.

Third, the Hawkins' dismissal of the pending state court action does not do away with their claims against the two estates, as the Hawkins have filed timely proofs of claim in both bankruptcy cases. POC 11; Case No. 12-29776, POC 3, Ex. B. Those proofs of claim are the equivalent to complaints. Unless objected to, those proofs of claim stand and have to be paid. 11 U.S.C. § 502(a). The Hawkins' proof of claim in this case was filed on February 21, 2012, whereas the deadline for filing proofs of claim in the case was on July 23, 2012. The Hawkins' proof of claim in the Deuces Wild case was filed on September 7, 2012, whereas the deadline for filing proofs of claim in the case was on October 3, 2012.

The above dates for when the proofs of claim were filed also satisfy the January 2014 and May 31, 2014 California statutes of limitation - as calculated by the Robinsons - for rescission and for the enforcement of promissory notes, correspondingly. Docket 360 at 10, 10 n.2. The court also notes that even though the Hawkins have dismissed their state court action, the dismissal was without prejudice. The court then is unconvinced that the Hawkins' claims against the estates are time barred.

Fourth, the Robinsons also ignore the fact that, despite the debtor paying only $90,000 to settle the Hawkins' section 523 claim, the nondischargeable judgment entered against him in favor of the Hawkins is for $1,555,063.40, meaning that the Hawkins' fraud claim against Robert Brown is for much more than $90,000. The Robinsons are ignoring the Robert Brown estate's liability on account of that judgment. The settling of the section 523 claim does not somehow satisfy the claims against the estate of Robert Brown.

Turning to the merits of the settlement, as there are no other objections to the compromise, the court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the resolution of the proofs of claim against both estates, given the disallowance of the Hawkins' interest in the estate property sold and resulting sales proceeds, given that solely the Hawkins' breach of contract claim included over $900,000 in damages, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

6. 14-29540-A-7 ALAN DAVIS — MOTION TO COMPEL ABANDONMENT 10-28-14 [10]
DN-1

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests an order compelling the trustee to abandon the estate's

interest in his mobile vehicle repair service, American Fleet Service.

However, neither the motion nor supporting declaration identifies the assets of the business. Directing the court to the schedules without identifying the assets and telling the court which assets are encumbered and/or exempt, and to what extent they are encumbered and/or exempt, invites the court to speculate about which assets belong to the business. For instance, the debtor owns five vehicles and the court cannot tell which of the vehicles are part of the business. The court should not have to speculate about the assets of the business. The motion will be denied.

7. 14-25962-A-7 KAREN CONYERS — MOTION TO REDEEM
SDB-2 — 10-7-14 [29]

Tentative Ruling: The motion will be denied without prejudice.

The debtor wishes to redeem a 2013 Dodge Dart in good condition with 10,000 miles, for $12,387. The vehicle is subject to a claim held by General Motors Financial Company, Inc., for approximately $18,403.31.

The motion will be denied. Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

First, while the motion says that the vehicle has been claimed as exempt under Cal. Civ. Proc. Code § 703.140(b)(2), the attached Schedule C contains no exemption of the vehicle. Docket 33, Ex. B. Also, the exemptions claimed in the attached Schedule C are pursuant to Cal. Civ. Proc. Code § 704.730. Id.

Second, the vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor's valuation of the vehicle is based on her declaration asserting that "[I]n my opinion the fair market value of said vehicle is $12,387.00." Docket 31 ¶ 4.

However, the debtor has not been qualified to render an opinion as to "the price a retail merchant would charge" for the vehicle. The declaration does not qualify the debtor as anything other than a lay witness. See Fed. R. Evid. 701. On the other hand, specialized knowledge and an expert witness is necessary in rendering an opinion as to the price a retail merchant would charge for the vehicle. See Fed. R. Evid. 702.

In addition, even if the debtor were qualified as an expert witness to render an opinion as to the price a retail merchant would charge for the vehicle, the basis for the debtor's opinion is not adequately stated in her declaration. See Fed. R. Evid. 703. The debtor merely says that the vehicle is in "good condition," without explaining what she considers to be good condition. Hence, the court does not have admissible evidence of value for the vehicle. Accordingly, the motion will be denied.

As a final note, the court will not approve attorney's fees for the debtor's counsel. The court does not approve compensation paid by chapter 7 debtors to their attorneys. If compensation is paid for services related to the bankruptcy filing, it is incumbent on counsel to comply with the disclosure requirements of Fed. R. Bankr. P. 2016(b). If the disclosed compensation is unreasonable, a party in interest may request a review of it.

8. 12-29776-A-7 DEUCES WILD, INC. MOTION TO APPROVE COMPROMISE
DNL-5 10-16-14 [93]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between this estate and the related bankruptcy estate of Robert Brown, on one hand, and Philip and Linda Hawkins, on the other hand. The settlement resolves proofs of claim filed by the Hawkins against both estates.

Creditor Christofer Communications, Inc., opposes the motion.

As this motion is identical to the motion to approve compromise by the bankruptcy trustee in the Robert Brown bankruptcy case, Case No. 11-44723, and the opposition to this motion is nearly identical to the opposition by the Robinsons to the motion in the Robert Brown case, the court will dispose this motion pursuant to the ruling on the motion in the Robert Brown case, also to be heard on the court's November 17, 2014 calendar. The ruling on the motion to compromise in the Robert Brown case follows below.

The motion will be granted.

The trustee requests approval of a settlement agreement between this estate and the related bankruptcy estate of Deuces Wild, Inc., on one hand, and Philip and Linda Hawkins, on the other hand. The settlement resolves proofs of claim filed by the Hawkins against both estates.

Creditors Jamey and John Robinson oppose the motion, arguing that the settlement is unfair and inequitable, given that:

- the Hawkins did not comply with this court's instructions to litigate the state court action first and then proceed with the pending nondischargeability adversary proceeding;

- the Hawkins settled their nondischargeability claim with the debtor, who agreed to pay them $90,000 in full satisfaction of the claim;

- this court had ruled that the Hawkins' claim "would be limited to the amount of debt adjudicated nondischargeable;"

- the Hawkins dismissed the pending state court action;

- "[p]ermitting the Hawkins to assert two general unsecured claims in the amount of $900,000 for 'contract damages' would amount to double recovery and would constitute unjust enrichment;"

- the Hawkins' claims against the estates are time barred.

The Hawkins' proof of claim in the Deuces Wild case is for $1,155,063.40 and it is based on breach of contract, unjust enrichment, and restitution state court claims, where they are seeking rescission, specific performance, other injunctive relief, money judgment and the appointment of a receiver. Case No. 12-29776, POC 3, Ex. B.

The Hawkins' proof of claim in the instant case is for $2,677,678.69 and it is based on fraud and breach of contract claims. POC 11.

Under the terms of the compromise, as consideration for the Hawkins' proofs of claim in the two bankruptcy cases, the Hawkins will be allowed "a $900,000 general unsecured claim" against both estates. Any liens or encumbrances of the Hawkins against the assets of the two estates or resulting sales proceeds, will be disallowed. The estates and the Hawkins will execute mutual releases. This compromise is unrelated and has no bearing on the compromise between the debtor and the Hawkins over their 11 U.S.C. § 523 claim.

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 is unpersuaded by the arguments advanced by the Robinsons.

First, the court disagrees that the settlement provides for two $900,000 claims. The court's reading of the settlement agreement is that the Hawkins will have a single $900,000 claim that will be allowed in both bankruptcy cases as a general unsecured claim. In other words, satisfaction of one proof of claim in one of the cases will decrease the amount of the proof of claim in the other case.

Second, the Robinsons have misunderstood the court's instructions for the Hawkins to go back to state court to litigate the claims against the debtor. They were allowed to liquidate all their claims against the estate, including both dischargeable and nondischargeable portions. But, only the nondischargeable portion of the claims reduced to judgment is relevant to the Hawkins' litigation of the 11 U.S.C. § 523 claim against Robert Brown. That is why the court told the Hawkins that their § 523 claim against Robert Brown would be limited to the amount of debt adjudicated nondischargeable.

And, it is only the § 523 claims that Robert Brown settled with the Hawkins. He did not settle their claims against the estates. The Hawkins then did not disobey instructions by settling the § 523 claim and dismissing the pending state court action.

Third, the Hawkins' dismissal of the pending state court action does not do away with their claims against the two estates, as the Hawkins have filed timely proofs of claim in both bankruptcy cases. POC 11; Case No. 12-29776, POC 3, Ex. B. Those proofs of claim are the equivalent to complaints. Unless

objected to, those proofs of claim stand and have to be paid. 11 U.S.C. § 502(a). The Hawkins' proof of claim in this case was filed on February 21, 2012, whereas the deadline for filing proofs of claim in the case was on July 23, 2012. The Hawkins' proof of claim in the Deuces Wild case was filed on September 7, 2012, whereas the deadline for filing proofs of claim in the case was on October 3, 2012.

The above dates for when the proofs of claim were filed also satisfy the January 2014 and May 31, 2014 California statutes of limitation - as calculated by the Robinsons - for rescission and for the enforcement of promissory notes, correspondingly. Docket 360 at 10, 10 n.2. The court also notes that even though the Hawkins have dismissed their state court action, the dismissal was without prejudice. The court then is unconvinced that the Hawkins' claims against the estates are time barred.

Fourth, the Robinsons also ignore the fact that, despite the debtor paying only $90,000 to settle the Hawkins' § 523 claim, the nondischargeable judgment entered against him in favor of the Hawkins is for $1,555,063.40, meaning that the Hawkins' fraud claim against Robert Brown is for much more than $90,000. The Robinsons are ignoring the Robert Brown estate's liability on account of that judgment. The settling of the § 523 claim does not somehow satisfy the claims against the estate of Robert Brown.

Turning to the merits of the settlement, as there are no other objections to the compromise, the court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the resolution of the proofs of claim against both estates, given the disallowance of the Hawkins' interest in the estate property sold and resulting sales proceeds, given that solely the Hawkins' breach of contract claim included over $900,000 in damages, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

9. 12-29776-A-7 DEUCES WILD, INC.
DNL-6

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-16-14 [99]

Tentative Ruling: The motion will be granted in part.

Desmond, Nolan, Livaich & Cunningham, special counsel for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $35,782.50 in fees and $408.96 in expenses, for a total of $36,191.46. This motion covers the period from April 16, 2012 through the present. The court approved the movant's employment as the trustee's special counsel on June 21, 2012. This case was filed on May 21, 2012. In performing its services, the movant charged hourly rates of $175, $195, $225, $275, $300, $350, $375 and $400.

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

"reimbursement for actual, necessary expenses."

The movant's services were limited to the representation of this estate and the related Robert Brown bankruptcy estate in the settlement of the claims asserted by creditors Philip and Linda Hawkins and the estates' joint sale of assets.

The movant's services included, without limitation:

(1) assisting the estate with the joint sale and settlement of claims between this estate and the Robert Brown estate, on one hand, and creditors Philip and Linda Hawkins, on the other hand,

(2) preparing sale and settlement agreement with the Hawkins and a related motion,

(3) preparing another motion about the sale of the estates' assets,

(4) working with the California Gambling Control Commission on their approval of the sale,

(5) monitoring the licensing of the buyers,

(6) attending court and administrative hearings,

(7) responding to stay relief and abstention motions brought by the Hawkins,

(8) resolving liens asserted by the IRS, the Hawkins, and the Robinsons,

(9) preparing related stipulations with the IRS and the Robinsons and a settlement agreement with the Hawkins,

(10) researching and advising the two estates about gambling law issues related to licenses held by the debtor and Robert Brown,

(11) preparing stipulations over the challenges to the gambling licenses held by the debtor and Robert Brown, and

(12) preparing and filing employment and compensation motions.

With one exception, the court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The exception is that the court cannot approve compensation for pre-petition services. This case was filed on May 21, 2012, approximately one month before the court approved the movant's employment as special counsel for the estate. Nonetheless, the movant is asking the court to approve compensation reaching back to approximately April 16, 2012, over one month prior to the petition date. Docket 103 at 5. The movant could not have possibly provided services to the estate before the May 21, 2012 petition date. The court's approval of the movant's compensation is limited to post-petition services. The motion will be granted in part.

10. 14-30590-A-7 MATTHEW PARKER FULTZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
RSG-1 — 10-31-14 [11]
LISA HARDEN VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy

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

The motion will be granted.

The movant, Lisa and Shane Harden, seeks relief from the automatic stay as to real property in Olivehurst, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in September 2014. The movant served a three-day notice to pay or quit on the debtor on September 9, 2014. After expiration of the notice, the movant filed an unlawful detainer action on September 18, 2014. After some unsuccessful attempts at serving the debtor, the movant was finally able to consummate service on October 16, 2014. The debtor filed this bankruptcy case on October 27, 2014.

The movant seeks relief from stay to exercise rights under state law to obtain possession of the property, including continuation of the pending unlawful detainer action.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. Even though the debtor is a tenant at the property, he has defaulted under the lease agreement by failing to pay the rent due from September 2014 until the present. And, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice that was served on the debtor and expired 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.

11. 13-28491-A-7 JAMES ENGLISH — MOTION TO SELL
TGM-3 — 10-22-14 [112]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $112,000 the estate's unencumbered 40% interest in a commercial real property in Sacramento, California (23rd Street) and the estate's unencumbered 40% interest in a commercial real property in Sacramento, California (Belvedere Avenue), to Jeffrey Williamson, who owns the other 60% interests in each of the two properties. The sale is as is, where is, and without representations or warranties. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The 23rd Street property is subject to a mortgage held by Wells Fargo Bank in the approximate amount of $417,000 and a recorded lien in favor of the California Franchise Tax Board for $47,000.

The Belvedere Avenue property is subject to a mortgage held by Wells Fargo Bank in the approximate amount of $553,000 and a recorded lien in favor of the California Franchise Tax Board for $47,000.

Selling the properties to Mr. Williamson will ensure that the mortgage holders will not accelerate the loans upon transfer of the estate's interests in the properties.

The trustee expects that the payoff for the two FTB liens will be approximately $34,000 and, if it is more than $55,000, the trustee may terminate the sale agreement.

The sale will be subject to Wells Fargo Bank's mortgages on the properties.

Mr. Williamson manages the maintenance, rental, mortgage servicing, and other costs and obligations associated with the properties.

Mr. Williamson has advised the trustee that the properties have substantial deferred maintenance, estimated in excess of $75,000. Mr. Williamson recently expended $20,000 to replace doors on the Belvedere Avenue property.

As of approximately October 2013, the value of the 23rd Street property was $750,000 and the value of the Belvedere Avenue property was $820,000.

According to Mr. Williamson, there are three tenants at the Belvedere Avenue property, paying aggregate monthly rent of $5,358. Mr. Williamson's D7 Roofing Services, Inc. corporation is the only tenant of the 23rd Street property. D7 pays $7,000 a month in rent.

Mr. Williamson will be paying all costs of sale, such as escrow charges, transfer taxes, sales taxes and recording costs, and there will be no real estate commissions associated with the sale.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate, after payment of the FTB liens up to the amount of $55,000.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

12. 14-21091-A-7 CHRISTOPHER DUGHI MOTION FOR
MJH-2 SANCTIONS
10-3-14 [21]

Tentative Ruling: The motion will be denied.

The debtor, Christopher Dughi, moves for sanctions against Laura Dughi, his former spouse, for an alleged violation of the automatic stay.

The Dughi's marriage was dissolved on July 2, 2010. Id. The judgment for dissolution provided that the debtor and Laura Dughi were to share equally in the payment of community credit card debt. Docket 24 and 34. In September 2013, Laura Dughi settled the community debt. Docket 24 and 31. In January 2014, Laura Dughi sought reimbursement from the debtor for one-half of the community debt she paid, approximately $6,784.75. Id. Shortly thereafter, on February, 05, 2014, Christopher Dughi filled this chapter 7 bankruptcy case. Id. Laura Dughi was listed as an unsecured creditor in the bankruptcy holding a claim of $6,784.75. Docket at 1, Schedule F. The debtor received his chapter 7 discharge on May 27, 2014 and the case was closed on May 30, 2014.

The instant motion follows a post discharge, state court action filed by Laura Dughi on August 13, 2014, where she sought reimbursement for the debtor's portion of the community debt.

The motion will be denied for several reasons.

First, the motion presents no facts evidencing a violation of the automatic stay. All of the misconduct alleged in the motion postdates the debtor's chapter 7 discharge. The principal misconduct alleged in the motion is Laura Dughi's filing of the state court action on August 13, 2014; yet, the debtor had received a bankruptcy discharge before that date. The automatic stay expired as to the debtor and the debtor's property on May 27, 2014. See 11 U.S.C. § 362(c)(2)(C).

Second, the case was closed on May 30, 2014. Closure of the case automatically dissolved the automatic stay as to the bankruptcy estate. See 11 U.S.C. § 362(c)(2)(A). Even though the case was reopened on October 8, 2014, the automatic stay was not resurrected. Thus, the filing of the August 13, 2014 state court action could not have violated the automatic stay.

Third, even if the court assumes that the debtor intended to seek sanctions for a violation of the discharge injunction, the debtor has not demonstrated that the violation was willful.

Unlike a violation of the automatic stay, there is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Barrientos v. Wells Fargo Bank, 633 F.3d 1186, 1188-89, 1191 (9th Cir. 2011); Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008). And, pursuant to Barrientos v. Wells Fargo Bank, 633 F.3d 1186, 1190-91 (9th Cir. 2011), contempt proceedings for violation of 11 U.S.C. § 524 must be brought by a motion and not via an adversary proceeding.

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt power under 11 U.S.C. § 105. A party who willfully violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Rosales v. Wallace (In re Wallace), Case No. N.V.-11-

1681-KiPaD at *5, 2012 WL 2401871 (B.A.P. 9th Cir. June 26, 2012).

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

For the award of sanctions under section 105(a), a party's violation of the section 524 discharge injunction must be willful. The Ninth Circuit applies a two-part test to determine wether the willfulness standard has been met: (1) did the alleged offending party know that the that the discharge injunction applied; and (2) did the party intend the actions violated the discharge injunction. Wallace 2012 WL 2401871 at *5. For the second prong the focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue. Wallace at *5 (citing Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (B.A.P. 9th Cir. 2000)).

The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the offending party violated the order. In re Zilog, Inc., 450 F.3d at 1007; Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The moving party also has this same burden to demonstrate that the sanctions sought are justified. Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) aff'd, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010). The burden then shifts to the offending party to demonstrate why it was unable to comply. Id. If a bankruptcy court finds that a party has willfully violated the discharge injunction it may award actual damages, punitive damages and attorney's fees to the debtor. In re Bennett, 298 F.3d 1059, 1069 (9th Cir. 2002).

The debtor has not met his burden of proof under Wallace because he has not demonstrated in the motion that Laura Dughi knew the discharge injunction applied when she filed the state court action.

Fourth, the court is unconvinced that the debt owed to Laura Dughi was discharged and that the discharge injunction even applies to that debt.

11 U.S.C. § 523(a)(15) provides: "A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—

. . .

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit."

In the 2005 amendments, Congress eliminated the reference to section 523(a)(15) in section 523(c)(1). This means that the nondebtor spouse need not file a nondischargeability action with respect to claims covered by section 523(a)(15) in the bankruptcy court. Pub. L. No. 109-8, § 215(2) (2005), *effective in cases commenced on or after October 17, 2005*. Debts subject to section 523(a)(15) are now automatically nondischargeable. Either spouse may file an

action in this court if there is some dispute as to the applicability of section 523(a)(15), or the state court issuing the nonsupport award is able to determine whether the debt is nondischargeable. Howard v. Howard, 336 S.W.3d 433, 443-44 (Ky. 2011).

The court is not convinced that Laura Dughi's debt was discharged, when the debtor received his discharge, given:

- the 2005 BAPCPA amendment of section 523(a)(15), as discussed above;

- the debtor's failure to file a complaint to determine the applicability of section 523(a)(15); and

- the debtor's admission that the debt Laura Dughi is seeking to collect from him was incurred in the course of their divorce or separation.

The debtor has admitted that the debt Laura Dughi is seeking to collect is community debt. That debt is identified in the marital settlement agreement, at page two, attached to the judgment for dissolution. Dockets 32 & 35. Because there is no language in the judgment for dissolution directing the debtor to pay any portion of the community debt does not mean that section 523(a)(15) does not apply. The marital settlement agreement ratified by the judgment for dissolution expressly states that "[t]he parties shall share equally the following credit card debt as of the date of separation." Docket 32 at 5. The judgment for dissolution unequivocally states that "[p]roperty division is ordered as set forth in the attached settlement agreement, stipulation for judgment, or other written agreement." Hence, the debtor incurred the debt in the course of their divorce or separation for purposes of section 523(a)(15).

Given the foregoing, the court is unconvinced that the debt owed to Laura Dughi was discharged and that the discharge injunction even applies to that debt.

To the extent the debtor attempts to establish a violation of the discharge injunction in his reply to the opposition, this is improper. The debtor's burden of persuasion should have been met in the motion and not in the reply to the opposition. Establishing in the reply what should have been established in the motion denies Laura Dughi notice and opportunity to respond to the request for discharge violation damages.

The motion will be denied.

13. 14-27997-A-7 JLS-1 SAFEAMERICA CREDIT UNION VS.

RICHARD SANTOS AND KAREN ENG

MOTION FOR RELIEF FROM AUTOMATIC STAY 10-6-14 [30]

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

The movant, Safeamerica Credit Union, seeks relief from the automatic stay as to a real property in Woodland, California.

Given the entry of the debtor's discharge on November 12, 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 $243,000 and it is encumbered by claims totaling approximately $282,263. The movant's deed is in second priority position and secures a claim of approximately $72,921.

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 3, 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.

14. 14-27997-A-7 JLS-2 — RICHARD SANTOS AND KAREN ENG — MOTION FOR RELIEF FROM AUTOMATIC STAY — SAFEAMERICA CREDIT UNION VS. — 10-6-14 [24]

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

The movant, Safeamerica Credit Union, seeks relief from the automatic stay as to a real property in Woodland, California.

Given the entry of the debtor's discharge on November 12, 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 $243,000 and it is encumbered by claims totaling approximately $282,263. The movant's deed is in first priority position and secures a claim of approximately $209,342.

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 3, 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.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

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

FINAL RULINGS BEGIN HERE

15. 12-24710-A-7 NONATO/JOYCE GAOIRAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-4 — 10-15-14 [96]

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 $12,000 in fees and expenses, reduced from $22,288 in fees and $560.63 in expenses. This motion covers the period from April 19, 2012 through the present. The court approved the movant's employment as the trustee's attorney on May 9, 2012. In performing its services, the movant charged hourly rates of $195, $250, $295, $315, and $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing bankruptcy documents, (2) assessing the merits of the debtor's exemptions, (3) evaluating an objection to the debtor's discharge, (4) reviewing stay relief motions as to the debtor's real properties, (5) preparing and prosecuting a motion to abandon the debtor's real property in Vallejo, California, (6) preparing and prosecuting a motion to abandon the debtor's real property in Benicia, California, (7) assisting the trustee with the sale of a real property in the Phillippines, (8) preparing and prosecuting a motion to employ a real estate broker for the sale of the property in the Phillippines, (9) communicating with the manager of the property and the estate's real estate broker, (10) reviewing offers for the purchase of the property and advising the trustee about them, and (11) preparing and filing employment and compensation motions.

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

While this is not relevant to the amount of the subject compensation award - given the movant's approximate $10,000 reduction in fees, the movant's time and cost entries contain some questionable items. For instance, there is a court appearance entry for DAS dated 10/31/2014 "regarding HCS fee application." Docket 100 at 5. Yet, the court sees no hearings having taken place on October 31, 2014 in this case, much less a hearing on the movant's fee application. The hearing on this motion is set for November 17, 2014.

16. 14-27410-A-7 THEODORE/MYRNA SNEED — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 10-16-14 [19]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on the trustee's counsel, Dana Suntag.

17. 14-23914-A-7 JULIA BARNES — MOTION TO AVOID JUDICIAL LIEN
DN-1 — 10-9-14 [27]
VS. DISCOVER BANK

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

The motion will be granted.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $5,753.86 on July 18, 2012. The abstract of judgment was recorded with San Joaquin County on January 23, 2013. That lien attached to the debtor's residential real property in Stockton, 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 $200,000 as of the date of the petition. The unavoidable liens total $226,500 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,850 in Amended Schedule C. Docket 13.

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

18. 14-23914-A-7 JULIA BARNES — AMENDED MOTION TO AVOID JUDICIAL LIEN
DN-2 — 10-14-14 [33]
VS. CACH, L.L.C.

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 Cach, LLC for the sum of $18,120.25 on May 16, 2013. The abstract of judgment was recorded with San Joaquin County on July 24, 2013. That lien attached to the debtor's residential real property in Stockton, 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 $200,000 as of the date of the petition. The unavoidable liens total $226,500 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,850 in Amended Schedule C. Docket 13.

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).

19. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION TO APPROVE REPORT AND COMPENSATION OF AUCTIONEER
TAA-7 — 10-16-14 [66]

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. 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. 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.

20. 13-23517-A-7 TRACY GATEWAY, LLC — MOTION FOR EXAMINATION
FWP-1 — 9-22-14 [114]

Final Ruling: The parties have agreed to continue the hearing on this motion to December 15, 2014 at 10:00 a.m. Docket 138.

21. 14-29620-A-7 ESMERALDA GUZMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-14-14 [20]
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 dismissed as moot.

The movant, TD Auto Finance, seeks relief from the automatic stay with respect to a 2006 Chrysler 300 vehicle.

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

The petition here was filed on September 26, 2014 and a meeting of creditors was first convened on November 4, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 26. The debtor has not filed a statement of intention in this case.

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

Here, the debtor has filed no statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 26, 2014, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on November 5, 2014, indicating an intent not to administer the vehicle or any other assets.

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

October 26, 2014.

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

22. 11-44723-A-7 ROBERT BROWN
DNL-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-16-14 [351]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, special counsel for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $35,782.50 in fees and $408.96 in expenses, for a total of $36,191.46. This motion covers the period from April 16, 2012 through the present. The court approved the movant's employment as the trustee's special counsel on April 11, 2012. In performing its services, the movant charged hourly rates of $175, $195, $225, $275, $300, $350, $375 and $400.

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

The movant's services were limited to the representation of this estate and the related Deuces Wild, Inc. bankruptcy estate in the settlement of the claims asserted by creditors Philip and Linda Hawkins and the estates' joint sale of assets.

The movant's services included, without limitation:

(1) assisting the estate with the joint sale and settlement of claims between this estate and the Deuces Wild, Inc. estate, on one hand, and creditors Philip and Linda Hawkins, on the other hand,

(2) preparing sale and settlement agreement with the Hawkins and a related motion,

(3) preparing another motion about the sale of the estates' assets,

(4) working with the California Gambling Control Commission on their approval of the sale,

(5) monitoring the licensing of the buyers,

(6) attending court and administrative hearings,

(7) responding to stay relief and abstention motions brought by the Hawkins,

(8) resolving liens asserted by the IRS, the Hawkins, and the Robinsons,

(9) preparing related stipulations with the IRS and the Robinsons and a settlement agreement with the Hawkins,

(10) researching and advising the two estates about gambling law issues related to licenses held by the debtor and Deuces,

(11) preparing stipulations over challenges to the gambling licenses held by the debtor and Deuces, and

(12) preparing and filing employment and compensation motions.

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

23.	05-36844-A-7 DNL-6	STACEY STREETER	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 10-20-14 [66]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $10,782.50 in fees and $59.46 in expenses, for a total of $10,841.96. This motion covers the period from February 19, 2014 through October 14, 2014. The court approved the movant's employment as the trustee's attorney on March 4, 2014. In performing its services, the movant charged hourly rates of $150, $175, $275, and $400.

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

"reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) assisting the estate with the valuation of a personal injury action that was previously undisclosed by the debtor,

(2) reviewing and communicating with the debtor about an exemption claim asserted as to the action,

(3) preparing a motion to approve settlement of the action,

(4) preparing and prosecuting motion for retroactive approval of employment of the attorney who represented the debtor's and the estate's interests in the personal injury action,

(5) preparing and prosecuting motion for retroactive approval of employment of the plan administrator for the settlement of the personal injury action and other similar actions,

(6) preparing and prosecuting motion for compensation of the attorney who represented the debtor's and the estate's interest in the personal injury action,

(7) preparing and prosecuting motion for compensation of the plan administrator for settlement of the action and other similar actions, and

(8) 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.

24.	07-29659-A-7 JAMES COLLINS	MOTION TO
	CAH-2	AVOID JUDICIAL LIEN
	VS. DITCH WITCH EQUIPMENT CO., INC.	10-3-14 [41]

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

The motion will be granted.

The hearing on this motion was continued from November 3, to allow the debtor to supplement the record. The debtor filed a supplemental declaration on November 3.

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 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 $240,000 as of the date of the petition. The unavoidable liens total $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.

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).

25. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-3
VS. CAVALRY PORTFOLIO SERVICES, L.L.C. — 10-3-14 [46]

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

The motion will be granted.

The hearing on this motion was continued from November 3, to allow the debtor to supplement the record. The debtor filed a supplemental declaration on November 3.

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 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 $240,000 as of the date of the petition. The unavoidable liens total $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.

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).

26. 07-29659-A-7 JAMES COLLINS — MOTION TO AVOID JUDICIAL LIEN
CAH-4
VS. UNIFUND CCR PARTNERS — 10-3-14 [51]

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

The motion will be granted.

The hearing on this motion was continued from November 3, to allow the debtor to supplement the record. The debtor filed a supplemental declaration on November 3.

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 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 $240,000 as of the date of the petition. The unavoidable liens total $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.

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

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

The motion will be granted.

The hearing on this motion was continued from November 3, to allow the debtor to supplement the record. The debtor filed a supplemental declaration on November 3.

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 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 $240,000 as of the date of the petition. The unavoidable liens total $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.

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).

28. 14-27860-A-7 ROBERT/JULIE KNOX — MOTION TO AVOID JUDICIAL LIEN
BLG-3
VS. STANLEY EDELMAN — 10-7-14 [42]

Final Ruling: The motion will be dismissed without prejudice because the motion was not served on the respondent creditor, Stanley Edelman. While the debtor served Mr. Edelman's state court attorneys, Michael Cogan and David Brady, unless the attorneys agreed to accept service, this service is insufficient. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). There is no proof of such an agreement.

29. 14-28275-A-7 ANDREW MONTANO — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
TD AUTO FINANCE, L.L.C. VS. — 10-8-14 [12]

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

The motion will be dismissed as moot.

The movant, TD Auto Finance, seeks relief from the automatic stay with respect to a 2011 Chevrolet Aveo vehicle.

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

The petition here was filed on August 14, 2014 and a meeting of creditors was first convened on September 11, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than September 11. The debtor has not filed a statement of intention in this case.

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

Here, the debtor has filed no statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically

terminated on September 13, 2014, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on September 11, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on September 13, 2014.

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

30. 14-26088-A-7 PATRICK THORNTON — MOTION TO AVOID JUDICIAL LIEN
JKU-2
VS. CAPITAL ONE BANK (USA), N.A. — 10-8-14 [31]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $8,509.72 on December 9, 2013. The abstract of judgment was recorded with Sacramento County on March 28, 2014. That lien attached to the debtor's residential real property located 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 $216,427 as of the date of the petition. The unavoidable liens total $175,027 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 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 no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

31. 12-41294-A-7 JERRY CHUCULATE — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-2 — 10-20-14 [48]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

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. 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. 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.