UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 23, 2015 at 10:00 a.m.

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

6, 14, 16, 17

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 21, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 7, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 14, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 11-37803-A-7 ALAN/SABRINA TANNER — MOTION TO AVOID JUDICIAL LIEN
SPB-3
VS. DIRECT MERCHANTS CREDIT CARD BANK, N.A. — 11-4-15 [41]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Sabrina Tanner in favor of Direct Merchants Credit Card Bank for the sum of $3,224.88 on April 1, 2009. The abstract of judgment was recorded with Butte County on November 16, 2010. That lien attached to the debtor's residential real property in Oroville, California. The debtor is asking the court to avoid the lien.

The subject real property had an approximate value of $185,182 as of the petition date. Dockets 44 & 1. The unavoidable liens totaled $367,159.73 on that same date, consisting of a first mortgage for $261,304.52 in favor of GMAC, a second mortgage for $95,184.91 in favor of Specialized Loan Servicing, and a third mortgage for $10,670.30 in favor of Dyck-O-Neal, Inc. Dockets 43 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 51.

The motion will be denied because the debtor amended her Schedule C on November 4, 2015, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 51. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied without prejudice.

Finally, the request to order the escrow company to release the $21,000 it is holding in escrow pending resolution of this and the other related lien avoidance motion will be also denied as the court cannot permit the recovery of money or property, or determine the extent, validity or priority of interest in property without an adversary proceeding. Fed. R. Bankr. P. 7001(1) & (2).

2. 11-37803-A-7 ALAN/SABRINA TANNER — MOTION TO AVOID JUDICIAL LIEN
SPB-4
VS. BENEFICIAL CALIFORNIA, INC. — 11-4-15 [46]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Sabrina Tanner in favor of Beneficial California, Inc. for the sum of $10,887.94 on October 27, 2008. The abstract of judgment was recorded with Butte County on February 10, 2009. That lien attached to the debtor's residential real property in Oroville, California. The debtor asks for avoidance of the lien.

The subject real property had an approximate value of $185,182 as of the petition date. Dockets 49 & 1. The unavoidable liens totaled $367,159.73 on that same date, consisting of a first mortgage for $261,304.52 in favor of GMAC, a second mortgage for $95,184.91 in favor of Specialized Loan Servicing, and a third mortgage for $10,670.30 in favor of Dyck-O-Neal, Inc. Dockets 50 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 51.

The motion will be denied because the debtor amended her Schedule C on November

4, 2015, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 51. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied without prejudice.

Finally, the request to order the escrow company to release the $21,000 it is holding in escrow pending resolution of this and the other related lien avoidance motion will be also denied as the court cannot permit the recovery of money or property, or determine the extent, validity or priority of interest in property without an adversary proceeding. Fed. R. Bankr. P. 7001(1) & (2).

3. 15-27806-A-7 ASHWINI KUMAR — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDN-1 — 10-26-15 [21]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

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

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

The movant is the legal owner of the property after a foreclosure sale conducted in March 2015. The debtors filed this bankruptcy case on October 5, 2015.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it.

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to file an unlawful detainer action against the debtors to recover possession of the property.

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

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

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

The movant's request for in rem relief from stay under 11 U.S.C. § 105(a) will be denied, as such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

No in rem relief is sought under section 362(d)(4) and such relief is unavailable here as it can be awarded only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

4. 15-27612-A-7 ELENA MAZUR
PA-1

MOTION TO
DISMISS CASE
10-26-15 [13]

Tentative Ruling: The motion will be denied.

Creditor Frank's Quality Meats moves for dismissal of the case under 11 U.S.C. § 521(e)(2), due to the debtor's failure to produce requested tax returns within seven days before the October 28, 2015 initial meeting of creditors.

11 U.S.C. § 521(e)(2) provides that:

"*(2)(A) The debtor shall provide--*

"*(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and*

"*(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.*

"*(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.*

"*(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.*"

The debtor filed this chapter 7 case on September 29, 2015. The initial meeting of creditors was set for October 28, 2015. The movant filed and served on the debtor a request for a tax return pursuant 11 U.S.C. § 521(e)(2)(A)(ii). Dockets 6 & 7. The debtor does not deny receiving the request. While providing the requested tax return, along with other documents to the trustee, the debtor did not provide it to the movant until the October 28 meeting of creditors, thus violating the seven-day deadline of section 521(e)(2)(A)(ii). See also 11 U.S.C. § 521(e)(2)(A)(i) and (ii).

Nevertheless, the trustee has requested that the case remain pending as in his opinion "the creditors would not benefit from dismissal of the case at this time." Docket 25. The trustee has also learned that "*the estate may have a claim against the Movant to avoid an abstract of judgment that was recorded on August 11, 2015 and apparently attached to the debtor's interest in an unimproved one-half acre lot in El Dorado County valued in the schedules at $20,000 and not subject to claim of exemption.*"

Despite the movant's insistence that the case must be dismissed due to the debtor's failure to comply with section 521(e)(2)(A)(ii), given the "shall dismiss the case" language of section 521(e)(2)(B), the Ninth Circuit has held that in enacting § 521, Congress did not intend to strip bankruptcy courts from

the flexibility needed to "respond intelligently" to an attempt to manipulate the bankruptcy system. Wirum v. Warren (In re Warren), 568 F.3d 1113, 1119 (9th Cir. 2009) (addressing the automatic dismissal under section 521(i)(1) - mandating that "the case shall be automatically dismissed" - for failure to file documents within the 45-day deadline).

"*Interpreting § 521 to grant authority to 'order [ ] otherwise' even after § 521(i)(1)'s forty-five day filing deadline has passed not only furthers congressional intent, but also preserves 'the authentic value of automatic dismissal.' Id. at 13. When a party moves for an order dismissing an incomplete petition, the court can do one of three things: (1) dismiss the case, (2) decline to dismiss the case if an exception applies, or (3) determine, in its discretion, that the missing information is not required or that denial of dismissal is necessary to prevent a debtor from abusing and manipulating the bankruptcy system. Id. This approach 'recognizes that missing information may or may not be required, in a practical sense, depending upon what is deemed material by the court many months (or even years) after the bankruptcy petition has been filed.' Id. at 14. 'This would seem to be a likely reason for Congress to have entrusted the bankruptcy court with discretion to modify disclosure requirements on the fly.' Id. And '[c]ommon sense suggests that Congress never intended to strip the bankruptcy court of the flexibility needed to respond intelligently to' a debtor who is attempting to manipulate the system simply because the forty-five day filing deadline has passed. Id. at 14. Thus, where a bankruptcy court reasonably determines that there is no continuing need for the information or waiver of the filing requirement is necessary 'to prevent automatic dismissal from furthering a debtor's abusive conduct, the court has discretion to take such an action.' Id.*"

Warren at 1118-19 (quoting and citing Segarra-Miranda v. Acosta-Rivera (In re Acosta-Reivera), 557 F.3d 8, 13, 14 (1st Cir. 2009)).

As this court is charged to prevent abuse of the bankruptcy system by both debtors and creditors, the above language from Warren applies with equal force to the movant in this case. Common sense suggests that Congress never intended to strip the bankruptcy court of the flexibility needed to respond intelligently to a creditor who is attempting to manipulate the system simply because it received documents entitled to under section 521(e)(2)(A)(ii) seven days late. This is especially true where the trustee has requested that the case not be dismissed as he has determined that dismissal would prejudice unsecured creditors because there are assets to be administered for their benefit. Importantly, one of those assets is a potential avoidance claim against the movant.

The court will not allow the unsecured creditors to be prejudiced by dismissal of the case because of a seven-day delay in the production of documents by the debtor to a single creditor, the movant particularly when the movant has not shown that it has been prejudiced by the debtor's seven-day delay.

"*We recognize that our interpretation of § 521 is in conflict with the majority of the bankruptcy and district courts to address this issue. . . . Those courts have taken the view that § 521(i)(1)'s forty-five day deadline for filing the § 521(a)(1) financial information 'applies to courts and debtors alike.' In re Acosta-Rivera, 557 F.3d at 12. This view 'reads into the filing deadline a restriction on bankruptcy courts' authority gleaned by implication from the "automatic dismissal" provision.' Id. Admittedly, this reading of § 521 does have some appeal in that it would 'all but guarantee' dismissal at a*

party's request once the forty-five day filing deadline has passed and thereby arguably would address Congress's concern with 'the recent escalation of consumer bankruptcy filings.' Id. at 13. However, such a reading also would allow abusive and manipulative debtors to gain automatic dismissal and thereby encourage bankruptcy abuse. We decline to read § 521 in this manner.

"*We hold that the bankruptcy court acted within its discretion in issuing its order waiving the § 521(a)(1) filing requirement even though the § 521(i)(1) forty-five day filing deadline had passed.*"

Warren at 1119.

As a separate and independent basis for denial of dismissal, the court will exercise its discretion, based on the lack of prejudice to the movant and the substantial prejudice to the unsecured creditors if the case is dismissed, to retroactively extend the deadline for the debtor to submit the documents requested by the movant to October 28, 2015. See, e.g., Fed. R. Bankr. P. 9006(b)(1). The motion will be denied.

5. 15-27213-A-7 GINA WEST — ORDER TO SHOW CAUSE 10-30-15 [17]

Tentative Ruling: The petition will be dismissed.

The debtor filed an Amended Schedule F on October 16, 2015, but did not pay the $30 filing fee. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

6. 15-28229-A-7 BERKSHIRE PROPERTY INVESTMENTS, LLC — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJR-1 NORTHERN CALIFORNIA MTG. FUND V, L.L.C. VS. 11-5-15 [7]

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, Northern California Mortgage Fund V, LLC, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $259,062. The movant's deed is in first priority position and secures a claim of approximately $184,062.

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

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

To the extent applicable, 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 be waived.

7.	11-34464-A-7 STUART SMITS 11-2636 BARDIS V. SMITS	ORDER TO APPEAR FOR EXAMINATION (STUART LANSING SMITS) 10-14-15 [61]

Tentative Ruling: None. The respondent and judgment debtor shall appear and be sworn in prior to the call of the November 23, 2015 10:00 a.m. calendar.

8. 14-27337-A-7 DONNA RICHARDS — MOTION TO REOPEN CASE
RLC-1 — 10-23-15 [24]

Tentative Ruling: The motion will be granted insofar as it requests that the case be reopened but all other relief will be denied.

The debtor's counsel requests the court to reopen the case, waive the requirement for a post-petition personal financial management course certificate, and enter the debtor's discharge.

The court can reopen a case to "accord relief to the debtor." 11 U.S.C. § 350(b). Motions for the reopening of cases should be "routinely granted because the case is necessarily reopened to consider the underlying request for relief." In re Dodge, 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992) (citing In re Corgiat, 123 B.R. 388, 392, 393 (Bankr. E.D. Cal. 1991)).

The case will be reopened for the limited purpose of considering a waiver of the requirement that the debtor complete a course on a personal financial management. This case was filed on July 17, 2014. The trustee filed a report of no distribution on September 24, 2014. The case was closed on November 4, 2014 without entry of discharge. Docket 22. The debtor passed away on September 17, 2015. This motion was filed on October 23, 2015.

The motion does not explain why it took nearly a year to move to reopen the case. When the case was closed, on November 4, 2014, the debtor was still alive. Had the motion been more prompt, the debtor could have taken the course.

9. 11-40155-A-7 DWIGHT BENNETT — MOTION TO SELL
HSM-4 — 10-20-15 [301]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $40,000 the estate's interest in litigation rights with respect to a real property in Susanville, California, presently involving two pending actions, to Bank of America, Nationstar Mortgage and Wells Fargo Bank. The asset being sold is the estate's claims, rights, defenses and appeals with respect to the real property. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate.

While the trustee is uncertain of the actual value of the litigation rights being sold, given the drawn-out nature, complexity, risks and overall messiness of the litigation, she asserts that the proposed sale is in the best interest of the estate and the creditors.

The court agrees. The litigation involves several parties, each with divergent interests, including the debtor, the co-owner of the real property (Judy St. John), the person to whom part of the real property was sold (Norm Allen), the banks/mortgagees holding secured claims in the real property, the state court receiver, and The Grace Foundation of Northern California.

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).

10. 11-22859-A-7 FRANK/MARILYN FERRIS — MOTION TO AVOID JUDICIAL LIEN
HP-2
VS. TIM HOMAN AND RUSSELL PUTMAN — 11-6-15 [47]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor Frank Ferris in favor of Tim Homan and Russell Putnam for the sum of $194,738.42 on January 29, 2010. The abstract of judgment was recorded with Sacramento County on February 25, 2010. That lien attached to the debtor's residence in Sacramento, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of $375,000 as of the petition date. Dockets 51 & 61. The unavoidable liens totaled $405,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 51 & 61. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Amended Schedule C. Dockets 51 & 61.

The motion will be denied because the debtor amended Schedule C on November 7, 2015, to add an exemption in the subject property, but he did not serve the Amended Schedule C on all creditors, including on Sonoma Bank and Wells Fargo Bank, informing them of the added exemption. Dockets 4, 61, 62.

And, although the trustee and few other creditors were served with the Amended Schedule C on November 6, 2015, parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Docket 62; Fed. R. Bankr. P. 4003(b)(1). Yet, the hearing on this motion is being held on November 23, only 17 days after the limited service of the Amended Schedule C.

Because the debtor has not afforded all parties in interest an opportunity to object to the amended exemption claim, the motion will be denied.

The motion will be denied also because the debtor's evidence of value for the property is inadmissible. The motion's evidence of value for the subject property is a declaration from the debtor stating that "[u]sing zillow.com, we estimate the value of the property . . . to be $375,000." Docket 50 ¶ 4. This evidence of value is inadmissible hearsay and inadmissible expert evidence because the debtor is basing his opinion on research and on what zillow.com says about the value of the property. It is inadmissible hearsay because the debtor is repeating out-of-court statements of third parties about the value of the property. Fed. R. Evid. 802.

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

admissible evidence of value for the property is another reason for denying the motion.

11. 11-22859-A-7 FRANK/MARILYN FERRIS — MOTION TO AVOID JUDICIAL LIEN
HP-3
VS. WIGGINS 21 LENDER, L.L.C. — 11-9-15 [63]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Frank Ferris in favor of Wiggins 21 Lender, LLC for the sum of $1,208,642.35 on October 6, 2009. The abstract of judgment was recorded with Sacramento County on February 25, 2010. That lien attached to the debtor's residential real property in Sacramento, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of $375,000 as of the petition date. Dockets 67 & 61. The unavoidable liens totaled $405,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 67 & 61. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Amended Schedule C. Dockets 67 & 61.

The motion will be denied because the debtor amended Schedule C on November 7, 2015, to add an exemption in the subject property, but he did not serve the Amended Schedule C on all creditors, including on Sonoma Bank and Wells Fargo Bank, informing them of the added exemption. Dockets 4, 61, 62.

And, although the trustee and few other creditors were served with the Amended Schedule C on November 6, 2015, parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Docket 62; Fed. R. Bankr. P. 4003(b)(1). Yet, the hearing on this motion is being held on November 23, only 17 days after the limited service of the Amended Schedule C.

Because the debtor has not afforded all parties in interest an opportunity to object to the amended exemption claim, the motion will be denied.

The motion will be denied also because the debtor's evidence of value for the property is inadmissible. The motion's evidence of value for the subject property is a declaration from the debtor stating that "[u]sing zillow.com, we estimate the value of the property . . . to be $375,000." Docket 65 ¶ 4. This evidence of value is inadmissible hearsay and inadmissible expert evidence because the debtor is basing his opinion on research and on what zillow.com says about the value of the property. It is inadmissible hearsay because the debtor is repeating out-of-court statements of third parties about the value of the property. Fed. R. Evid. 802.

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

motion.

12. 11-22859-A-7 FRANK/MARILYN FERRIS — MOTION TO AVOID JUDICIAL LIEN
HP-4
VS. JASON GRAZIANO — 11-6-15 [54]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Frank Ferris in favor of Jason Graziano for the sum of $53,181.36 on March 28, 2013. The abstract of judgment was recorded with Sacramento County on April 29, 2013. That lien attached to the debtor's residential real property in Sacramento, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of $375,000 as of the petition date. Dockets 58 & 61. The unavoidable liens totaled $405,000 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 58 & 61. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Amended Schedule C. Dockets 58 & 61.

The motion will be denied because the debtor amended Schedule C on November 7, 2015, to add an exemption in the subject property, but he did not serve the Amended Schedule C on all creditors, including on Sonoma Bank and Wells Fargo Bank, informing them of the added exemption. Dockets 4, 61, 62.

And, although the trustee and few other creditors were served with the Amended Schedule C on November 6, 2015, parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Docket 62; Fed. R. Bankr. P. 4003(b)(1). Yet, the hearing on this motion is being held on November 23, only 17 days after the limited service of the Amended Schedule C.

Because the debtor has not afforded all parties in interest an opportunity to object to the amended exemption claim, the motion will be denied.

The motion will be denied also because the debtor's evidence of value for the property is inadmissible. The motion's evidence of value for the subject property is a declaration from the debtor stating that "[u]sing zillow.com, we estimate the value of the property . . . to be $375,000." Docket 57 ¶ 4. This evidence of value is inadmissible hearsay and inadmissible expert evidence because the debtor is basing his opinion on research and on what zillow.com says about the value of the property. It is inadmissible hearsay because the debtor is repeating out-of-court statements of third parties about the value of the property. Fed. R. Evid. 802.

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

13. 15-26966-A-7 LESYA KHRYPTA — MOTION FOR
PPR-1 — RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 10-21-15 [19]

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

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

With respect to the debtor, the movant has proffered no evidence of value for the property. See 11 U.S.C. § 362(g) (imposing the burden of proof on the issue of equity on the moving creditor). And, the debtor has not listed an interest in the property in her schedules. As a result, the court cannot determine whether there is any equity in the property and whether the movant's interest in the property is adequately protected. Thus, the court will deny relief under section 362(d)(1) and (2) as to the debtor.

The court also notes that the debtor's discharge will be entered on or soon after November 30, 2015, dissolving the stay as to the debtor automatically. The same is true even if the case is closed without entry of discharge. 11 U.S.C. § 362(c)(2)(A) & (C).

As to the estate, the analysis is different. The trustee filed a report of no distribution on October 1, 2015. The trustee has also filed a non-opposition to this motion.

The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

Finally, the court will deny relief under section 362(d)(4), which prescribes that:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The movant complains that the debtor was added on the title of the property in March 2015, approximately six months prior to the instant September 2, 2015 filing. On March 18, 2015, the original borrower on the loan reflecting the movant's claim, Ann Harvell, who obtained the loan in 2007, transferred the property to herself and the debtor, as community property with a right of survivorship.

However, the court is not persuaded that the transfer makes the filing of the instant petition part of a scheme to delay, hinder, or defraud creditors. The transfer seems to be merely placing a new spouse on title, and imparting right of survivorship on the debtor in order to avoid probate in the event Ann Harvell passes away. The length of time between the transfer and the filing - approximately six months - also indicates that the transfer was not necessarily made in contemplation of filing this case. Accordingly, relief under section 362(d)(4) is improper.

14. 15-24481-A-7 EMERY ULRICH — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
WELLS FARGO BANK, N.A. VS. — 9-11-15 [12]

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

The hearing on this motion was continued from October 13, 2015. The trustee had until November 9 to file a response to the motion. Docket 24. The trustee has not filed a response.

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

Given the entry of the debtor's discharge on October 6, 2015, 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 $250,000 and it is encumbered by claims totaling approximately $261,460. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

15. 15-22890-A-7 ANGELICA BOCHAROFF — OBJECTION TO EXEMPTIONS 10-15-15 [31]
PA-2

Tentative Ruling: The objection will be dismissed as moot in part and continued in part.

The trustee objects to the debtor's September 15, 2015 amended claim of exemption under Cal. Civ. Proc. Code § 704.070 of a Bank of America bank account with $5,005.89. Docket 21.

The debtor states that she has filed an Amended Schedule C, decreasing her exemption in the Bank of America account to $0.00. Docket 35. The debtor apparently started the case in without attorney representation. She retained an attorney only recently.

The debtor also amended Schedule B to increase the balance in the Bank of America account from $742 to $5,005.89. She asserts that the amendment was necessary because her estranged non-filing spouse had refused to provide information about that account. Dockets 16 & 21. The debtor recently obtained updated information about the account balance.

In any event, given the decreased exemption claim to $0.00, the objection will be dismissed as moot.

As to the request for a turnover of the nonexempt balance in the Bank of America account, the hearing on the objection will be continued to December 7, 2015, when the court will hear the debtor's motion for conversion of the case to chapter 13. The court is inclined to allow the debtor to resubmit her declaration in support of this motion (Docket 39), but executed under the penalty of perjury.

16. 14-29391-A-7 ENRIQUE QUILES — MOTION TO EMPLOY 11-2-15 [90]
DNL-5

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

any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The chapter 7 trustee requests authority to employ Ritchie Bros. Auctioneers as auctioneer of the estate. Ritchie will assist the estate with the sale of two vehicles, a 2008 Honda Ridgeline and a 2002 Ford F350 XLT Super Duty Crew Cab.

The proposed compensation arrangement is a 15% commission if the sale generates less than $2,500 in gross proceeds and 25% commission if the sale generates more than $2,500 in gross proceeds (the motion seems to mistakenly state "less than $2,500"), along with reimbursement of reasonable expenses not to exceed $1,500.

The trustee also asks for permission to sell the vehicles via auction. The auction will be held on December 8, 2015. The vehicles are unencumbered. The trustee has estimated the value of the Honda vehicle to be approximately $8,000 and the Ford vehicle between $3,500 and $4,500, assuming the vehicles are smogged, which is accounted for in the projected $1,500 of expenses.

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

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

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

17. 15-27494-A-7 BRIAN/ALEENA GILBERT — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 11-6-15 [13]
CAPITAL ONE, N.A. 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, Capital One, seeks relief from the automatic stay as to a real property in Antelope, California. The property has a value of $250,000 and it is encumbered by claims totaling approximately $328,103. The movant's deed is in first priority position and secures a claim of approximately $222,872.

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

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

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

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

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

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

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

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

18. 15-27399-A-7 DALJIT/HARMANDEEP SIDHU — MOTION FOR RELIEF FROM AUTOMATIC STAY
HRH-1 — 10-8-15 [9]
TRANSPORTATION TRUCK AND TRAILER SOLUTIONS, L.L.C. VS.

Tentative Ruling: The motion will be dismissed as moot with respect to the 2009 Freightliner truck.

The movant, Transportation Truck and Trailer Solutions, LLC, had sought relief from the automatic stay with respect to a 2009 Freightliner tractor truck and 2006 utility refrigerated van. The court held a hearing on the motion on October 26, 2015. Docket 27. After the court dismissed the motion as moot with respect to the 2006 utility van, the court continued the hearing to November 23 with respect to the 2009 Freightliner truck, as the trustee had sought time to determine whether administering the 2009 truck would benefit the estate.

The trustee has filed a response, indicating that the 2009 truck is not of consequential value to the estate and he is not interested in administering the vehicle. Docket 33. The motion then will be dismissed as moot with respect to the 2009 truck, in accordance with the ruling below.

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 21, 2015 and a meeting of creditors was first convened on October 21, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 21. The debtor filed a statement of intention on the petition date, but without listing the vehicles in the statement of intention.

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 did not list the vehicles in the 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 21, 2015, 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.

Here, the trustee has indicated that the 2009 truck is not of consequential value to the estate. Docket 33.

Therefore, without this motion being filed, the automatic stay terminated on October 21, 2015 as to the 2009 truck.

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.

THE FINAL RULINGS BEGIN HERE

19.	08-35602-A-7 JMH-2	MUZIO BAKING COMPANY, L.L.C.	MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE 10-26-15 [174]

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

The motion will be granted.

The chapter 7 trustee, J. Michael Hopper, has filed first and final motion for approval of compensation. The requested compensation consists of $4,321.22 in fees (reduced from the $4,576.58 cap) and $0.00 in expenses. The services for the sought compensation were provided from April 23, 2012 through July 31, 2015. The sought compensation represents 35.2 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $38,265.76 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $4,576.58 ($1,250 (25% of the first $5,000) + $3,326.58 (10% of the next $45,000 (or $33,265.76)) + $0.00 (5% of the next $950,000 (or $0.00)). Hence, the requested trustee fees of $4,321.22 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) retrieving documents from prior trustee, (3) employing professionals to assist the estate in the administration of estate assets, (4) conferring with the estate's accountant about tax issues, (5) reviewing estate tax returns, (6) communicating with the IRS and the California Franchise Tax Board about late

filing penalty assessments, (7) conferring with the estate's counsel about issues with the prior trustee's administration, (8) filing a claim against the prior trustee's bond, (9) reviewing and analyzing claims, (10) preparing final report, and (11) preparing compensation motion.

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

20.	15-27904-A-7 AKL-1 VS. CAPITAL ONE BANK (USA), N.A.	GERT JONSSON AND EVELYN LAWSON	MOTION TO AVOID JUDICIAL LIEN 10-27-15 [11]

Final Ruling: This motion has been voluntarily dismissed. Docket 16.

21.	15-26009-A-7 DMW-1	NADEZHDA STROMKO	MOTION TO APPROVE COMPROMISE 10-14-15 [14]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor, resolving the trustee's avoidance claim against the debtor's sister, to whom the debtor transferred a Toyota Sienna vehicle valued at approximately $4,000, just prior to the filing of this case. The debtor contends that she transferred the vehicle to repay previously borrowed monies from her sister.

Under the terms of the compromise, the debtor will pay $2,000 to the estate in full satisfaction of the 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 concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake 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.

22. 11-25317-A-7 MOHAMMAD/SOUSAN MOTIEY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-4 — 10-26-15 [93]

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 $40,709 in fees and $3,076.12 in expenses, for a total of $43,785.12. This motion covers the period from April 1, 2013 through October 22, 2015. The court approved the movant's employment as the trustee's attorney on or about April 10, 2013. In performing its services, the movant charged hourly rates of $50, $75, $175, $195, $225, $275, $375, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the prosecution of an avoidance claim pertaining to the debtors' pre-petition transfer of a real property, (2) preparing status reports, appearing at hearings, propounding discovery, (3) negotiating settlement of the avoidance action, (4) preparing the settlement agreement and obtaining its court approval, (5) enforcing the settlement agreement after breach by the defendants, (6) assisting the estate with the sale of the property, under the default terms of the settlement, (7) monitoring litigation by a creditor also involving the real property, 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.

23. 15-26317-A-7 JESSICA/KIRK SPENCER — ORDER TO SHOW CAUSE
10-26-15 [21]

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

This order to show cause was issued because the debtor filed an Amended Schedule D on October 12, 2015, but did not pay the $30 filing fee. However, the debtor paid the fee on October 26, 2015. No prejudice has resulted from the delay.

24.	14-32144-A-7 GMR-2	SIMPLY FOOD ENTERPRISES, L.L.C.	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 10-15-15 [60]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $4,036.50 in fees and $92.05 in expenses, for a total of $4,128.55. This motion covers the period from January 23, 2015 through October 7, 2015. The court approved the movant's employment as the estate's accountant on January 27, 2015. In performing its services, the movant charged an hourly rate of $345.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included reviewing the debtor's financial records about transactions between the debtor and another business and preparing estate tax returns.

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

25.	14-32144-A-7 SCB-4	SIMPLY FOOD ENTERPRISES, L.L.C.	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 10-15-15 [54]

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.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,500, reduced from $20,670 in fees and $210.81 in expenses. This motion covers the period from January 16, 2015 through the present. The court approved the movant's employment as the trustee's attorney on January 29, 2015. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing assets of the estate, (2) analyzing tax issues, (3) prosecuting multiple avoidance claims, (4) reviewing defenses to the claims, (5) negotiating settlement with the debtor's principal and her spouse about their receipt of pre and post-petition payments, (6) preparing settlement agreement and obtaining court approval of it, (7) preparing and prosecuting a motion for abandonment of personal property assets, (8) evaluating claim against Bank of the West, and (9) 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.

26. 15-25945-A-7 DEBRA CAMPBELL — MOTION TO AVOID JUDICIAL LIEN
SDB-3
VS. LVNV FUNDING, L.L.C. — 10-13-15 [30]

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 LVNV Funding, LLC for the sum of $3,438.88 on May 27, 2009. The abstract of judgment was recorded with Sacramento County on July 13, 2009. That lien attached to the debtor's residential real property in North Highlands, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $174,000 as of the petition date. Dockets 33 & 34. The unavoidable liens totaled $104,808 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 1 & 33. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Schedule C. Docket 34.

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. 15-27053-A-7 TARLOCHAN/HARPREET DHALIWAL — ORDER TO SHOW CAUSE 10-27-15 [38]

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

This order to show cause was issued because the debtor filed an Amended Master Address List on October 13, 2015, but did not pay the $30 filing fee. However, the debtor paid the fee on October 30, 2015. No prejudice has resulted from the delay.

28. 15-26162-A-7 MAXIMO/ROSALINDA ALVARADO
JCW-1
DEUTSCHE BANK NATIONAL TRUST CO. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-23-15 [21]

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Stockton, California. The property is not listed in the debtors' schedules. The movant has produced evidence that the property has a value of $265,000 and it is encumbered by claims totaling approximately $431,681. Docket 24, Ex. 5. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 1, 2015.

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

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

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

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

29. 11-34464-A-7 STUART SMITS — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
TGM-16 — 10-21-15 [342]

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.

Boutin Jones Inc., special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $206,247 in fees and $10,583.65 in expenses, for a total of $216,830.65. This motion covers the period from March 27, 2012 through the present. The court approved the movant's employment as the trustee's attorney on April 12, 2012. In performing its services, the movant charged hourly rates of $200, $250, $275, $310, $325 and $390.

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) investigating the debtor's interests in various entities,

(2) investigating interests in various causes of action, including, without limitation, avoidance claims,

(3) initiating litigation on claims against various defendants, including avoidance claims,

(4) consummating the litigation on several adversary proceedings involving causes of action held by the estate,

(5) negotiating with defendants and other members of limited liability companies in which the estate holds interest (including Pacific Coast Exploration, LLC),

(6) investigating the estate's interests in an oil and gas lease and an operating agreement pertaining to the lease,

(7) preparing compromises,

(8) negotiating with the co-owners of the oil and gas lease and operating agreement interests,

(9) assisting the estate with the purchasing of another PCE member's interest,

(10) negotiating the sale of the oil and gas lease and operating agreement interests,

(11) preparing a motion to sell,

(12) evaluating assets for abandonment and preparing an abandonment motion,

(13) responding to a lawsuit directed at PCE members,

(14) communicating with the landlord of the oil and gas leasehold interests about stay violations,

(15) investigating administration alternatives as to the oil and gas lease and operating agreement interests after their sale collapsed, and

(16) 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.

30. 14-22266-A-7 BHT-1 THE BANK OF NEW YORK MELLON, ET., VS.
CHRISTOPHER/ELIZABETH BEHNAM
MOTION FOR RELIEF FROM AUTOMATIC STAY 10-14-15 [37]

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

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

The movant, The Bank of New York Mellon Trust Company, seeks relief from the automatic stay as to a real property in Pompano Beach, Florida.

As to the debtor Elizabeth Behnam and her bankruptcy estate, 11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay

with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On August 9, 2013, Elizabeth Behnam filed a chapter 13 case (case no. 13-28908). But, the court dismissed that case on September 26, 2013 pursuant to the debtor's request for dismissal. Elizabeth Behnam filed the instant chapter 7 case on March 5, 2014. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot as to Elizabeth Behnam and her estate because the automatic stay in the instant case expired in its entirety as to the subject property on April 4, 2014, 30 days after Elizabeth Behnam filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm as to Elizabeth Behnam and her estate that the automatic stay in the instant case expired in its entirety with respect to the subject property on April 4, 2014, 30 days after Elizabeth Behnam filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

As to the debtor Christopher Behnam and his estate, the analysis is different. Given the entry of Christopher Behnam's discharge on June 23, 2014, the automatic stay has expired as to Christopher Behnam and any interest he may have in the property. See 11 U.S.C. § 362(c). Hence, as to Christopher Behnam, the motion will be dismissed as moot.

With respect to Christopher Behnam's estate, however, the property has a value of $500,000 and it is encumbered by claims totaling approximately $1,693,243. The movant's deed is in first priority position and secures a claim of approximately $767,491.

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. And, the trustee has filed non-opposition to this motion.

Thus, the motion will be granted as to Christopher Behnam's bankruptcy 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.

31. 14-31178-A-7 JOHN HARRITT
EJS-3
VS. COMERCIAL BANK

MOTION TO
AVOID JUDICIAL LIEN
10-1-15 [41]

Final Ruling: This motion has been dismissed. Docket 52.

32. 15-25167-A-7 ERIC/KIMBERLY BONNIKSEN
HLG-1

MOTION TO
COMPEL ABANDONMENT
10-19-15 [16]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Camino, California. The entire equity in the property is exempt. The trustee has filed a non-opposition to the motion.

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

The debtors have scheduled the value of the property at $420,000. The property is encumbered by a single deed of trust in favor of Bank of America in the amount of $322,403. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

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