UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 1, 2014 at 10:00 a.m.

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

1, 6, 11, 12, 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 29, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 15, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 22, 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. 14-30900-A-7 MARK/RUNIKA PORTER — MOTION TO COMPEL ABANDONMENT 11-7-14 [7]
SJD-1

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their day care business, Loving Hands Daycare.

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.

According to the motion, the business assets include only the assets listed in connection with the $100 valuation of the business on item 13 of Schedule B. Such assets include toys and miscellaneous office supplies, with a total value of $100. The assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in item 13 of Schedule B, is of inconsequential value to the estate. The motion will be granted.

2. 13-30013-A-7 JON/FAITH PARMER — MOTION TO SELL 11-3-14 [56]
MPD-5

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $5,000 the estate's unencumbered interest in a promissory note with an outstanding principal balance of $34,663.30 to Roger Chappelka and Anne Chappelka. The payors on the note are Place Enterprises, Inc., Robert Place and Heather Place. The trustee does not have the note. Although the note matured pre-petition, in 2010, the payors have been making interest-only payments on the note since before the filing of this case, on July 31, 2013, pursuant to a pre-petition agreement between them and the debtors. The payors do not have present ability to pay the note in full. The debtors have exempted $1,500 in the value of the note. The note is being sold as is and where is, with no warranties or representations.

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.

3.	14-28520-A-7	CARLOS SAGASTUME AND	MOTION TO
	CFH-2	DINORA SURBER	AVOID JUDICIAL LIEN
	VS. PROFESSIONAL COLLECTION CONSULTANTS		10-27-14 [24]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Carlos Sagastume in favor of Professional Collection Consultants for the sum of $1,878.91 on February 4, 2011. The abstract of judgment was recorded with Solano County on March 30, 2011. That lien attached to the debtor's residential real property in Suisun City, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $247,469 as of the date of the petition. The unavoidable liens total $224,000 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $125,000 in Schedule C. Dockets 1 & 9.

However, the motion makes no effort to establish that the debtor is entitled to a $125,000 exemption claim under Cal. Civ. Proc. Code § 704.730. The sole supporting declaration states only that "We have exempted $125,000.00 of the property value in the Amended Schedule C of his bankruptcy petition. Therefore Creditor's involuntary lien impairs the claimed exemption as indicated on the Amended Schedule C of the bankruptcy petition." Docket 26 at 2.

The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

4.	14-28520-A-7	CARLOS SAGASTUME AND	MOTION TO
	CFH-3	DINORA SURBER	AVOID JUDICIAL LIEN
	VS. ASSET ACCEPTANCE, L.L.C.		10-27-14 [29]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Carlos Sagastume in favor of Asset acceptance LLC for the sum of $9,525.76 on August 10, 2011. The abstract of judgment was recorded with Solano County on November 15, 2011. That lien attached to the debtor's residential real property in Suisun City, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $247,469 as of the date of the petition. The unavoidable liens total $224,000 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $125,000 in Schedule C. Dockets 1 & 9.

However, the motion makes no effort to establish that the debtor is entitled to a $125,000 exemption claim under Cal. Civ. Proc. Code § 704.730. The sole supporting declaration states only that "We have exempted $125,000.00 of the

property value in the Amended Schedule C of his bankruptcy petition. Therefore Creditor's involuntary lien impairs the claimed exemption as indicated on the Amended Schedule C of the bankruptcy petition." Docket 31 at 2.

The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

5. 14-28520-A-7 CFH-4 VS. CAPITAL ONE BANK (USA), N.A.

CARLOS SAGASTUME AND DINORA SURBER

MOTION TO AVOID JUDICIAL LIEN 10-29-14 [34]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Carlos Sagastume in favor of Capital One Bank for the sum of $3,739.86 on March 22, 2011. The abstract of judgment was recorded with Solano County on June 7, 2011. That lien attached to the debtor's residential real property in Suisun City, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor has not established entitlement to the claimed exemption in the property. Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $247,469 as of the date of the petition. The unavoidable liens total $224,000 on that same date, consisting of a single mortgage in favor of Rushmore Loan Management Services. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $125,000 in Schedule C. Dockets 1 & 9.

However, the motion makes no effort to establish that the debtor is entitled to a $125,000 exemption claim under Cal. Civ. Proc. Code § 704.730. The sole supporting declaration states only that "We have exempted $125,000.00 of the property value in the Amended Schedule C of his bankruptcy petition. Therefore Creditor's involuntary lien impairs the claimed exemption as indicated on the Amended Schedule C of the bankruptcy petition." Docket 36 at 2.

The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

6. 13-32127-A-7 CJY-4 VS. CHASE BANK USA, N.A.

LIAN TANG

MOTION TO AVOID JUDICIAL LIEN 11-17-14 [38]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Chase Bank for the sum of $13,389.44 on December 3, 2010. The abstract of judgment was recorded with Sacramento County on August 24, 2011. 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 $238,955.62 as of the date of the petition. The unavoidable liens total $217,911.23 on that same date, consisting of a first mortgage for $169,911.23 in favor of Chase Home Finance (aka JPMorgan Chase Bank) and a second mortgage for $48,000 in favor of Sacramento Credit Unions. Docket 24. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $23,000 in Amended Schedule C. Docket 29.

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).

7. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
DNL-6 — 11-3-14 [53]

Tentative Ruling: The motion will be denied without prejudice.

Law Offices of Moseley Collins and Thomas Minder & Associates, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $209,493.63 in fees and $31,042.50 in expenses ($6,614.94 of which were advanced pre-petition), for a total of $240,536.13. The compensation relates solely to services provided in a medical malpractice action brought by the debtors on August 1, 2012, before this case was filed on April 15, 2013. The movant's services cover the period between July 2012 and the present. The court approved the movant's employment as special counsel for the trustee on March 12, 2014. Docket 50. The requested compensation is based on a regressive contingency fee basis, providing for 40% of the first $50,000 in net recovery, 33.3% of the second $50,000, 25% of the next $500,000 and 15% of any additional net recovery in excess of $600,000. Docket 49.

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."

First, the motion will be denied because it does not sufficiently describe the services provided by the movant and does not outline the time spent on those services. While the court infers from the motion that the movant's services consisted, without limitation, of investigating the debtors' malpractice claims, preparing, filing and prosecuting the complaint, conducting discovery, negotiating settlement, communicating with the estate's trustee and general counsel, and preparing the settlement agreement, such services are not described in the motion.

Second, the motion will be denied because it does not outline the time the movant spent on the services for which it is seeking compensation. Courts can

assess whether compensation terms are "improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a); In re Reimers, 972 F.2d 1127, 1128 (9th Cir. 1992) (quoting In re Confections by Sandra, Inc., 83 B.R. 729, 731 (B.A.P. 9th Cir. 1987)). This means that, at the conclusion of the movant's services, the court can re-examine the subject compensation terms in light of developments not anticipated now. As part of the court's examination, the court must review the actual time spent by the movant in providing the services for which it is seeking compensation.

Third, the court cannot and will not approve compensation for services provided by the movant before January 25, 2014. The application for the movant's employment as special counsel for the estate was not filed until February 24, 2014 and its employment was approved only prospectively on March 12, 2014. Dockets 43, 49, 50.

Fourth, the court understands that the foregoing deficiencies are mitigated by the fact that this is expected to be a surplus estate and that the debtors agree to the sought compensation by the movant.

But, this does not authorize the court to merely rubber-stamp the compensation request. The court must still determine the reasonableness of the fees, the necessity of the services, and the improvidence of the compensation terms, in light of developments not capable of being anticipated at the time of the fixing of such terms. Such determinations require adequate description of services provided and time spent on such services.

And, the consent of the debtors does not obviate the necessity for the movant's employment to have been approved on nunc pro tunc basis, given that the movant is now requesting compensation for services rendered many months before its prospective employment approval. The court is not willing to approve such compensation without a nunc pro tunc employment order. The court's authority in approving the movant's compensation is limited to the period of the movant's employment, absent a nunc pro tunc order. The court is not willing to approve such compensation without a nunc pro tunc employment order.

More, the trustee obviously knew of the medical malpractice action before September 23, 2013, when it filed a motion to compromise disputes with the debtors, pertaining to the action. Dockets 34, 39, 40. Nevertheless, the movant's employment application was not filed until February 24, 2014. Docket 43.

Fifth, the court is unclear about how it can approve compensation for pre-petition services and reimbursement of pre-petition costs, even if the debtors consent to such compensation, this is a surplus estate, and no one opposes the request. The medical malpractice action was filed on August 1, 2012, whereas the bankruptcy case was not filed until April 15, 2013. The court's jurisdiction is limited to reviewing and awarding compensation for post-petition services. As the malpractice claims were not even property of the bankruptcy estate pre-petition, the court is perplexed at how the movant's compensation for pre-petition services comes within its purview. 11 U.S.C. § 329 applies solely to "attorney[s] representing a debtor in a case under this title, or in connection with such a case."

Sixth, to the extent the movant contends that its compensation has been expressly segregated from the estate's administrative expenses by virtue of the settlement between the estate and the debtors, the court does not need to

approve the movant's compensation. This would make the instant motion unnecessary.

Finally, the court has been unable to find a disclosure in the motion about the compensation sharing arrangement between Law Offices of Moseley Collins and Thomas Minder & Associates.

8. 14-29540-A-7 ALAN DAVIS — MOTION TO COMPEL ABANDONMENT 10-28-14 [10]
DN-1

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

The hearing on the motion was continued from November 17, 2014. The debtor filed an additional declaration in support of the motion. Docket 19.

The debtor requests an order compelling the trustee to abandon the estate's interest in his mobile vehicle repair service, American Fleet Service.

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.

According to the motion, the business assets include:

- two bank accounts with a balance of $4,000,
- receivables totaling $2,300,
- a 2000 Ford F250 (valued at $7,500), and
- two compressors, AC machine, a lift, mechanics tools, and a Modius analyzer (valued at $16,000).

While the bank accounts, the receivables, and the vehicle were claimed as exempt in their entirety, the compressors, AC machine, lift, mechanics tools, and Modius analyzer were only partially claimed as exempt. These latter items were claimed as exempt only to the extent of $7,575, leaving $8,425 in nonexempt equity.

The court concludes that only the bank accounts, the receivables, and the vehicle are of inconsequential value to the estate. The compressors, AC machine, lift, mechanics tools, and Modius analyzer are not of inconsequential value to the estate, given the $8,425 in nonexempt equity. And, the motion has not established that the partially exempted items are burdensome to the estate.

Hence, the court will order abandonment only of the bank accounts, the receivables, and the vehicle. The motion will be denied as to the compressors, AC machine, lift, mechanics tools, and Modius analyzer.

9. 14-27447-A-7 EMILIE GLENN FAJARDO — MOTION TO DISMISS OR CONVERT CASE 10-27-14 [19]
UST-1

Tentative Ruling: The motion will be granted.

The U.S. Trustee moves for dismissal of this case pursuant to 11 U.S.C. § 707(b)(3)(B). In the alternative, the U.S. Trustee asks for conversion to chapter 13, assuming that the debtor consents to such conversion.

The court rejects the contention that this motion is untimely. The debtor's reliance on the 30-day deadline of 11 U.S.C. § 704(b)(2) is misplaced. That statute applies only where "the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b)." The only portion of 11 U.S.C. § 707(b) referring to presumption of abuse is 11 U.S.C. § 707(b)(2).

On the other hand, this motion is brought pursuant to 11 U.S.C. § 707(b)(3), which applies " in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted." 11 U.S.C. § 707(b)(3).

Hence, 11 U.S.C. § 704(b)(2) is not controlling here. Rather, the deadline for filing of this motion is governed by Fed. R. Bankr. P. 1017(e)(1), which provides that "[A] motion to dismiss a case for abuse under §707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under §341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under §707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse."

"Even had the court concluded that the UST failed to file a timely Ten-Day Statement under § 704(b)(1) and thus that he was barred from seeking dismissal of the Reeds' case under § 707(b)(2), the untimely Ten-Day Statement would not prevent the UST from seeking dismissal under § 707(b)(3). In Byrne, the UST filed a Ten-Day Statement similar to the first one filed in this case, stating that whether or not a presumption of abuse arose could not immediately be determined. Id, at 702. The bankruptcy court determined that this statement did not meet statutory requirements, and thus dismissal under § 707(b)(2) was barred. Id. It held, however, that 'the ten day statement under § 704(b)(1) is superfluous to a filing under § 707(b)(3),' and that '[e]ven though the UST failed to file a definitive statement as required under § 704(b)(1), ... [she] still ha[d] the right to proceed under § 707(b)(3)....' FN60 Id. at 704; see Perrotta, 378 B.R. at 438 ('Of course, nothing in § 704(b) prevents the UST from filing a motion to dismiss under § 707(b)(3) where the burden of proof will rest on the UST. [Citation omitted.] Where no presumption of abuse arises, the thirty-day deadline in § 704(b)(2) does not apply to the UST'); In re dePellegrini, 365 B.R. 830, 831 (Bankr.S.D.Ohio 2007) ('Where a presumption of abuse arises, a motion to dismiss under § 707(b)(2) must be filed within 30 days after the filing of the § 704(b)(1) statement. However, where there is no presumption of abuse, a motion to dismiss under § 707(b)(3) must be filed within 60 days after the date first set for the § 341 meeting of creditors')."

"As the Byrne court held, dismissal of a debtor's case under § 707(b)(2) and dismissal under § 707(b)(3) are distinct alternatives. The time limitations imposed by § 704(b)(1) apply only to motions to dismiss under § 707(b)(2). Motions under § 707(b)(3) are governed by the broader rule that a motion to dismiss for substantial abuse must be brought within 60 days of the first date set for the § 341(a) meeting of creditors. See FED. R. BANKR.PROC. 1017(e)(1) ('A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss'). Because the UST's motion was filed within 60 days of the first scheduled meeting of creditors, the UST was not precluded from seeking dismissal of the Reeds' case under § 707(b)(3), notwithstanding any

procedural defect that may have affected his motion under § 707(b)(2)."

Reed v. Anderson (In re Reed), 422 B.R. 214, 231 (C.D. Cal. 2009).

The instant motion was filed on October 27, 2014, 59 days after the initial meeting of creditors held on August 29, 2014. The motion then is timely.

Turning to the merits, 11 U.S.C. § 707(b)(3) provides that "In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse."

This motion is based solely on 11 U.S.C. § 707(b)(3)(B).

First, the debtor's opposition is not supported by any evidence. There is no declaration establishing the factual assertions in the opposition. All factual assertions in the motion then are inadmissible hearsay statements. Fed. R. Evid. 802; see also Local Bankruptcy Rule 9014-1(f)(1)(B) (requiring that all oppositions "be accompanied by evidence establishing its factual allegations").

Second, the totality of the circumstances of the debtor's financial situation demonstrates abuse. The debtor's household income exceeds her household expenses by $1,700.89. Docket 1, Schedule J. The court rejects the debtor's assertion that she has $1,540.66 in additional monthly expenses, not reflected on her Schedule J: $1,000 for her nonfiling spouse's nondischargeable monthly student loan payments and $4540.66 for a monthly vehicle payment. The only Schedule J on the case docket, filed by the debtor under the penalty of perjury, still reflects monthly disposable income of $1,700.89.

Also, the debtor's spouse's student loan debt is not listed in the debtor's schedules. Docket 1, Schedule F. While this debt may have been deferred as of the petition date, it does not mean that it was not incurred. There is no "deferred" exception for the listing of debt on the bankruptcy schedules.

More, even if the court takes into account the $1,540.66 in additional monthly expenses, the debtor still has $160.23 of household monthly disposable income that could be used to pay unsecured creditors a substantial dividend. Over a 60-month period, the debtor could pay approximately $9,600 on her scheduled $22,852.86 of general unsecured debt. Docket 1, Schedule F.

Moreover, the debtor has substantial other expenses on Schedule J that are unjustified. For instance, Schedule J budgets $650 a month for the care of one or more family members that live in the Phillippines. The debtor testified at the meeting of creditors that, at least some of those funds, are given to her 29-year old daughter there. Docket 23 at 2.

This court will not allow the debtor to subsidize the life of other adults, even if family members, while the debtor seeks to pay nothing to her unsecured creditors.

Further, Schedule J reflects substantial payments on unsecured claims that should be listed in the debtor's Schedules. Although those payments may be for loans of the debtor's spouse, this is a community property state, where the community property of the debtor and her spouse is liable for community debt.

For example, $686 in expenses on Schedule J are for unsecured debt of the debtor's spouse, not listed on the debtor's schedules: $200 a month on account of a Capital One credit card debt and $486.03 a month on account of Lending Club Loan debt. The opposition makes little or no effort to explain why these debts are not community debts. It simply says that "[r]egardless, [*sic*] of a de facto discharge of community debt, these debts will not discharge [in this case] because they are not community debts, as again this was a marriage of short duration at the time of filing."

Yet, Cal. Fam. Code § 910(a) provides that "[e]xcept as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt."

As the opposition is not supported by admissible evidence and there is nothing in the opposition except the naked assertion that these debts are not community debts, the debtor has not established that the community property is not liable for these debts. The debts should have been listed in the schedules and those creditors should not have been receiving preferential payments over other creditors listed in the schedules. This is another $686 a month of disposable income the debtor could use to pay creditors in a chapter 13 proceeding.

Given the foregoing, the totality of the circumstances of the debtor's financial situation demonstrates abuse. The motion will be granted and the case will be dismissed.

10. 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.

The motion must be denied because the debtor claimed an exemption in the vehicle in the amount of $0.00. Docket 37, Amended Schedule C. This is tantamount to claiming no exemption in the vehicle. Absent an allowed exemption, the vehicle cannot be redeemed pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992).

The court also notes that upon further amendment of Schedule C, the debtor must allow the 30-day exemption objection period to lapse before the court can

revisit the motion.

11. 14-20583-A-7 LARRY JENT — MOTION TO SUBSTITUTE ATTORNEY 11-17-14 [142]
JGD-2

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

The motion will be granted.

The attorney for the debtor is seeking an order for his substitution as counsel for the debtor with the debtor, in propria persona. The debtor has executed a substitution request, agreeing to the substitution. Docket 103.

Given the debtor's agreement to the substitution, the court will order it and grant this motion. The movant shall turn over a copy of the debtor's file within 14 days of entry of the order on this motion.

12. 14-29486-A-7 DAMIEN EVERSMANN — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-10-14 [12]
VVF-1
AMERICAN HONDA FINANCE CORP. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2007 Honda Odyssey 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 22, 2014 and a meeting of creditors was first convened on October 16, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 16. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 15, 2014, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on October 16, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 15, 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.

13. 14-30988-A-7 SHERYL CHESTER — MOTION TO COMPEL ABANDONMENT 11-7-14 [5]
SJD-1

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

The motion will be granted.

The debtor request an order compelling the trustee to abandon the estate's interest in her massage therapy business, Simple Pleasures Massage.

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.

According to the motion, the business assets include only the assets listed in connection with the $1,100 valuation of the business on item 13 of Schedule B. Such assets include massage table and miscellaneous supplies, with a total value of $1,100. The assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in item 13 of Schedule B, is of inconsequential value to the estate. The motion will be granted.

14. 14-25089-A-7 ANGIE ROERSMA — MOTION TO AVOID JUDICIAL LIEN
DEF-3
VS. AMERICAN EXPRESS CENTURION BANK — 11-13-14 [31]

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

The motion will be granted.

A judgment was entered against the debtor in favor of American Express Centurion Bank for the sum of $5,339.16 on August 9, 2013. The abstract of judgment was recorded with Sacramento County on April 8, 2014. That lien attached to the debtor's residential real property in Antelope, 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 $219,880 as of the date of the petition. The unavoidable liens total $163,909 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $55,971 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).

15. 14-29393-A-7 ALICIA RICHARDSON — TRUSTEE'S MOTION TO DISMISS
SLC-1 — 10-23-14 [30]

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

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on October 22, 2014.

The debtor's failure to appear at the October 22, 2014 meeting of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

16. 14-22895-A-7 CHRISTINA PEELER WALKER — AMENDED MOTION TO AVOID JUDICIAL LIEN
RAS-1 — 10-15-14 [37]
VS. CAPITAL ONE BANK, N.A., COUNTY OF SAN JOAQUIN

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $4,381.24 on October 25, 2013. The abstract of judgment was recorded with San Joaquin County on November 25, 2013. That lien attached to the debtor's residential real property in Tracy, California.

A judgment was entered against the debtor in favor of County of San Joaquin for the sum of $10,398.56 on October 3, 2013. The abstract of judgment was recorded with San Joaquin County on November 27, 2013. That lien attached to the debtor's residential real property in Tracy, California.

The debtor is asking the court to avoid the two judicial liens. The motion will be denied. The motion states no value for the property and fails to analyze whether there is equity in the property - aside of the unavoidable liens and exemption claim - to satisfy any portion of either liens.

While the motion and supporting declaration refer to the attached appraisal of Steven Dulkevich, assigning a value of $130,000 to the property, this statement of value is inadmissible hearsay because it is an out-of-court statement of a third party about the value of the property. Fed. R. Evid. 802. And, the appraisal is not supported by an authenticating declaration. Fed. R. Evid. 901(a). Given the absence of admissible evidence of value for the property and discussion about whether the liens impair the debtor's claim of exemption, the motion will be denied.

The court reminds the debtor that the value of the property considered in connection with lien avoidance motions is as of the petition date. The debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

THE FINAL RULINGS BEGIN HERE

17. 14-30107-A-7 SYETANNELL CONNER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 10-30-14 [12]
FIRST TECH FEDERAL CREDIT UNION VS.

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

The motion will be granted.

The movant, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2012 Kia Sportage. The vehicle has a value of $14,187 and its secured claim is approximately $28,357. Schedule B.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on November 19, 2014.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

18. 12-24710-A-7 NONATO/JOYCE GAOIRAN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
ASF-2 — 10-28-14 [102]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,966.50 in fees and $97.24 in expenses, for a total of $2,063.74. This motion covers the period from September 11, 2014 through October 26, 2014. The court approved the movant's employment as the estate's accountant on September 15, 2014. In performing its services, the movant charged an hourly rate of $345.

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

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

19. 13-30210-A-7 JAY BRYANT
JHW-1
TD AUTO FINANCE, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-31-14 [43]

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 2007 Dodge Ram 2500 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 1, 2013 and a meeting of creditors was first convened on September 10, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than August 31, 2013. The debtor filed a statement of intention on August 15, 2013, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle. Docket 15.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30

days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 10, 2013, 30 days after the initial meeting of creditors.

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

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

Therefore, without this motion being filed, the automatic stay terminated on October 10, 2013.

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.

20. 14-27911-A-7 JOIMIEKO CORGILE — ORDER TO SHOW CAUSE 10-30-14 [27]

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 F on October 16, 2014, but did not pay the $30 filing fee.

However, the court entered an order on November 3, 2014, waiving the amendment fee. Docket 31. Hence, this order to show cause will be discharged.

21. 14-28520-A-7 CFH-1 — CARLOS SAGASTUME AND DINORA SURBER — MOTION TO WAIVE REQUIREMENT TO COMPLETE COURSE IN PERSONAL FINANCIAL MANAGEMENT 10-23-14 [19]

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' counsel moves the court to waive the requirement for Debtor Carlos Sagastume to complete an instructional course on personal financial management before obtaining discharge. Carlos Sagastume passed away on September 2, 2014, 12 days after the filing of the instant petition.

11 U.S.C. § 727(a)(11) requires the completion of an instructional course on personal financial management as condition to obtaining discharge. But, section 727(a)(11) "shall not apply with respect to a debtor who is a person described in section 109 (h)(4)," namely, "a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone."

As Carlos Sagastume is deceased, the court will waive the personal financial management course requirement with respect to Carlos Sagastume. The motion will be granted.

22. 14-28720-A-7 RDW-1 — VANESSA CASTRO — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-3-14 [18]
TECHNOLOGY CREDIT UNION VS.

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

The motion will be granted.

The movant, Technology Credit Union, seeks relief from the automatic stay with respect to a 2006 Lexus RX 330 SUV. The vehicle has a value of $9,400 and its secured claim is approximately $11,196. Schedule B.

The court concludes that there is no equity in the vehicle and no evidence

exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on October 16, 2014. And, the vehicle has been surrendered to the movant already.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

23. 09-43132-A-7 TSAR
CDH-9

MOTION TO ABANDON AND PAY THE COST OF DESTRUCTION AS AN ADMINISTRATIVE EXPENSE
11-3-14 [192]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in the documents of the debtor, consisting of 20 to 25 boxes of paper and two computer towers. As the debtor's documents contain much confidential information, such as financial, medical or employment personal information, the trustee is asking also for authority to pay the costs associated with the destruction of the documents. The expected destruction cost is $279.13.

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

Under 11 U.S.C. § 503(b), after notice and a hearing, there shall be allowed administrative expenses including the actual, necessary costs and expenses of preserving the estate. 11 U.S.C. § 503(b)(1)(A).

The estate's administration is nearly complete and the documents are no longer of any value to the estate, given the resolution of Lisa Taylor's proof of claim, the last substantial matter to be administered by the trustee. The documents' destruction is necessary to protect confidential information and for

the estate and debtor to comply with applicable nonbankruptcy law in the disposal of such information. The documents' destruction is necessary also because there is no one to receive their abandonment. The debtor has been out of business for the approximately last five years.

The court will order the abandonment and destruction of the documents. The court will authorize the trustee to pay the destruction costs as an administrative expense claim. The motion will be granted.

24. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPROMISE
DNL-5 — 11-3-14 [59]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtors, on one hand, and Gus Salas, Alvaro Aguirre, Kelly Nations, Hilary Crawford, Sutter Health Sacramento Sierra Region (dba Sutter Memorial Hospital), and California Physicians Medical Group, on the other hand, resolving medical malpractice claims arising from the treatment of an infection of Debtor Robert Downey that resulted in the amputation of all four of his limbs. The claims include also loss of consortium causes of action asserted by Debtor Cheri Downey.

Under the terms of the compromise, defendants Gus Salas and Alvaro Aguirre shall pay $950,000 in full satisfaction of all the claims in the state court action. After payment of all medical liens ($401,322.52, subject to downward negotiation), special counsel's fees and costs ($240,536.13), the compensation of the estate's general counsel ($15,901.59), trustee's compensation (estimated at $4,000), the debtors' exemption claim ($43,841.43), and general unsecured claims against the estate ($12,408.69), the trustee expects that there will be $231,989.64 of surplus funds to be returned to the debtors.

The estate and the debtors settled the application of any litigation proceeds to the payment of medical liens, attorney's fees, exemption claims, and unsecured claims against the estate. Dockets 39 & 40. The court approved the settlement on October 22, 2013. Docket 39. Under that settlement, the litigation proceeds are to be divided as follows:

"First, to satisfy allowed medical liens,

Second, to satisfy the attorney's fees in the action, as allowed by this court,

Third, to satisfy all administrative expenses in this case (including taxes),

Fourth, to satisfy the debtors' wild card and personal injury exemptions in the total amount of $43,841.43,

Fifth, 50% to satisfy allowed and timely filed unsecured claims in this case and 50% to the debtors on account of their loss of future earnings and prosthetics exemption claims in the amount of $11 million,

Sixth, to satisfy allowed and untimely filed unsecured claims,

Seventh, to satisfy interest on allowed claims, and

Eight, remainder will be given to the debtors."

Docket 40 at 1-2.

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 debtors' endorsement of the settlement, given that the settlement will result in 100% dividend to general unsecured creditors, and given the inherent 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.

25. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-7 — 11-3-14 [64]

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 $15,794 in fees and $107.59 in expenses, for a total of $15,901.59. This motion covers the period from June 15, 2013 through October 29, 2014. The court approved the movant's employment as the trustee's attorney on July 9, 2013. In performing its services, the movant charged hourly rates of $150, $175, $195, $275, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing the debtors' malpractice claims and assessing the estate's interest in those claims, (2) negotiating with the debtors over their exemption claim in the medical malpractice action, (3) preparing settlement agreement with the debtors, (4) preparing and prosecuting a motion to compromise with the debtors over their exemption claim, (5) communicating with the estate's special counsel about the prosecution and settlement of the medical malpractice action, (6) preparing and prosecuting a motion to compromise the malpractice action, and (7) 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. 13-34447-A-7 LAURIE APARICO
JRR-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE
10-21-14 [50]

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

The motion will be granted.

The chapter 7 trustee, John Roberts, has filed his first and final motion for approval of compensation. The requested compensation consists of $7,513.75 in fees and $291.18 in expenses, for a total of $7,804.93. The services for the sought compensation were provided from November 12, 2013 through October 20, 2014. The sought compensation represents 47.3 hours of services at a blended hourly rate of $158.85.

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

The movant disbursed $256,307.50 to secured creditors and $7,520.54 to unsecured creditors, totaling $263,828.04 in distributions. This means that the cap under section 326(a) on the movant's compensation is $16,441.40 ($1,250 (25%) + $4,500 (10%) + $10,691.40 (5%)). Hence, the requested trustee fees of

$7,513.75 do not exceed the cap of section 326(a).

The court notes that the movant's services benefitted the estate by generating a 66.5% dividend to unsecured creditors. Docket 45.

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) analyzing the debtor's assets, (2) operating the debtor's rental property, (3) negotiating a $15,000 carve out with the secured creditors, (4) preparing and prosecuting a motion to operate the property, (5) operating the property, (6) preparing and prosecuting a motion to sell the property, and (7) preparing and prosecuting employment and compensation motions.

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

27. 14-28457-A-7 JASON MENDENHALL — MOTION TO AVOID JUDICIAL LIEN
DLM-1
VS. CITIBANK, N.A. — 10-28-14 [13]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Citibank for the sum of $4,951.67 on February 17, 2012. The abstract of judgment was recorded with Sacramento County on April 17, 2012. That lien attached to the debtor's one-third interest in a 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 $230,000 as of the date of the petition. The unavoidable liens total $156,679.97 on that same date, consisting of a single mortgage held by Guild Mortgage Company. This leaves only $73,320.03 of equity in the property. The debtor's one-third interest in this equity amounts to $24,440.01. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $75,000 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is 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. 14-28457-A-7 JASON MENDENHALL — MOTION TO AVOID JUDICIAL LIEN
DLM-2 — 10-28-14 [19]
VS. THE GOLDEN 1 CREDIT UNION

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, The Golden 1 Credit Union, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail. Docket 24. And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

29. 14-30458-A-7 NANCY JOHNSTON — ORDER TO SHOW CAUSE
11-5-14 [11]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on November 6, 2014. No prejudice has resulted from the delay.

30. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 10-27-14 [13]
U.S. BANK, N.A. VS.

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Elk Grove, California. The property has a value of $450,000 and it is encumbered by claims totaling approximately $1,030,848. The movant's deed is in first priority position and secures a claim of approximately $775,500.

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 23, 2014.

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

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

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

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

31. 14-25960-A-7 HECTOR FLORES — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 11-3-14 [41]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

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

The motion will be granted.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Olivehurst, California. The property has a value of $81,860 and it is encumbered by claims totaling approximately $220,822. 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.

32. 14-28763-A-7 BAO XIONG — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
BANK OF AMERICA, N.A. VS. — 10-22-14 [14]

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $153,749 and it is encumbered by claims totaling approximately $198,409. 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.

33. 14-26190-A-7 STEVE/MARY ARONS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 10-31-14 [72]
ONEWEST BANK, N.A. VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on Debtor Mary Arons at the correct address. Her address is not 65 Willotta Drive, as the proof of service for the motion asserts. Docket 78; see also Docket 12.

34. 14-28091-A-7 JEFFREY/CHERYL MARTINEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPP-1 — 10-31-14 [15]
U.S. BANK, N.A. VS.

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Redding, California. The property has a value of $290,834 and it is encumbered by claims totaling approximately $336,339. The movant's deed is in first priority position and secures a claim of approximately $291,199.

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.

35. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-11
VS. OPERATING ENGINEERS HEALTH & WELFARE TRUST FUND
10-6-14 [126]

Final Ruling: The hearing on this motion has been continued to December 29, 2014 at 10:00 a.m. Docket 130.