UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 15, 2014 at 10:00 a.m.

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

3, 4, 5, 8, 9, 10, 11

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. 13-23517-A-7 TRACY GATEWAY, LLC
HCS-6

MOTION TO
SELL AND TO APPROVE COMPENSATION
OF TRUSTEE'S REALTOR
11-17-14 [139]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $7.3 million the estate's interest in approximately 71 acres of a real property in Tracy, California to Apollo Equity, LLC, free and clear of the lien of U.S. Bank. The trustee also asks the court to approve an amendment to a previously approved carveout agreement between the estate and U.S. Bank, to make a good faith finding under 11 U.S.C. § 363(m), for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission; 5% commission of the gross sales price to Jim Martin of Lee & Associates (4% in the event the commission is not shared with the buyer's realtor).

The property that is the subject of this motion contains multiple assessor parcel numbers. Interested parties should review the motion for the specific parcel numbers encompassed by this property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The property is encumbered as follows:

(1) outstanding real property taxes for $1,073,000;

(2) U.S. Bank holds the first mortgage on the property with an original principal amount of $16.7 million; U.S. Bank's proof of claim is for approximately $15,953,642.30 and only $7.5 million of the proof of claim is claimed to be secured - the remainder is unsecured;

(3) a mechanics lien held by Jepsen Electric, Inc. for $409,913.50;

(4) a mechanics lien held by DeSilva Gates Construction for $1,196,455; and

(5) a mechanics lien held by DeSilva Gates Construction for $1,543,597.

The carveout agreement with U.S. Bank - approved by the court on March 3, 2014 (Dockets 62 & 71) - allows the estate to receive 10% of the gross sales price up to $850,000, allows for the realtor commission to be paid at 5% of the gross sales price, and allows for the payment of all amounts necessary to cover the closing costs on the sale. The remaining proceeds are to be paid to U.S. Bank. U.S. Bank has relinquished "any right to any other distribution from the estate." Docket 146 at 4.

Under the approved carveout agreement, the estate had until September 3, 2014 to sell the property. Yet, although the trustee located a buyer for the

property within that deadline, the trustee did not enter into the sales agreement until September 19, 2014. Nevertheless, U.S. Bank agreed to extend the sales period under the carveout agreement, requiring closing of the sale by December 31, 2014.

The trustee is asking the court to approve this amendment to the carveout agreement.

As part of the amendment to the carveout agreement, U.S. Bank and the trustee also entered into a stipulation for the lifting of the stay as of January 1, 2015, which stipulation the court approved on October 9, 2014. Docket 127.

In addition to the carveout agreement with U.S. Bank, Jepsen Electric has agreed under a stipulation not to assert a secured claim against the estate. Dockets 42 at 3. The court also entered an order on the stipulation, providing that "[a]ny liens in favor of Jepsen on the Debtor's real property are avoided and recovered for the benefit of the bankruptcy estate." Docket 43 at 2. DeSilva Gates Construction has entered into a similar agreement with the trustee. Dockets 40 at 3 & 41 at 2.

The sale will generate substantial proceeds, from an otherwise overencumbered property, 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.

Given U.S. Bank's consent to the sale, it will be approved as to U.S. Bank under 11 U.S.C. § 363(f)(2). As Jepsen and DeSilva have already relinquished their rights to assert a secured claim against the property, and the court has entered orders avoiding their interest in the property, they do not have a security interest in the property for purposes of 11 U.S.C. § 363(b) and (f) and this motion. And, as the estate will pay the outstanding property taxes from escrow in full, this sale is not free and clear of those taxes.

Accordingly, the court will:

- Approve the amendment to the carveout agreement with U.S. Bank;

- Waive the 14-day period of Rule 6004(h), as the trustee must close the sale within 10 days, before December 31, 2014;

- Authorize payment of the 5% real estate commission;

- Make a finding under 11 U.S.C. § 363(m). The trustee and his professionals do not have connection or relationship with the buyer and the negotiations were conducted at arms-length, making this such a transaction;

- Authorize the trustee to make all payments to close the sale, in accordance with the carveout agreement.

2. 14-30320-A-7 PETER WOLK — MOTION FOR RELIEF FROM AUTOMATIC STAY
RJW-1 — 12-1-14 [45]
NORTHERN CALIFORNIA NATIONAL BANK VS.

Tentative Ruling: The motion will be dismissed.

The movant, Northern California National Bank, seeks relief from the automatic stay with respect to personal property that is not owned by the debtor but by a

guarantor of a debt owed by the debtor to the movant. The personal property includes principally the receivables and proceeds from such receivables, as owned by Peter J. Wolk, M.D., a Professional Corporation. Docket 49, Ex. 4 at 1.

Schedule B does not list any receivables owned by the debtor. Docket 12, Schedule B, item 16. The movant admits that the debtor does not own the subject personal property. "The Debtor has not identified any interest in any accounts receivable in his schedules. . . . Rather, the Collateral belongs to the Corporation, which guaranteed the Loan and executed the Security Agreement as 'Grantor'." Docket 47 at 4.

As the movant is seeking relief from stay with respect to property not owned by the debtor, the court fails to see the applicability of 11 U.S.C. § 362(a) and the necessity for relief from stay.

The movant is not proceeding against the debtor or property of the debtor and/or the estate. By seeking to satisfy its claim from the subject personal property, the movant is proceeding against a co-debtor of the debtor, on account of the subject debt. It is proceeding on an obligation that is separate and independent from the debtor's obligation to the movant, namely, the guaranty of Peter J. Wolk, M.D., a Professional Corporation. Docket 49, Ex. 3 at 1-3. As the debtor has not been making payments on account of the obligation, the guaranty is ripe for enforcement.

More, there is no co-debtor stay in chapter 7 bankruptcy cases, as there is in chapter 13 cases. See 11 U.S.C. § 1301(a).

Hence, the motion will be dismissed as unnecessary.

Further, even if the debtor owned an interest in the subject personal property, the motion still would be dismissed.

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 October 17, 2014 and a meeting of creditors was first convened on December 9, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 17. The debtor filed a statement of intention on November 17 but without listing the subject personal 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 filed a statement of intention on November 17, he did

not list the subject personal property in the statement. 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 November 18, 2014, as to the subject personal property.

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 as to the subject personal property on November 18, 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.

3. 14-30922-A-7 PATRICK PHILLIPS — MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
GMW-1 — 12-1-14 [21]

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, Raman Deol, seeks confirmation that the automatic stay is no longer in effect, pursuant to 11 U.S.C. § 362(c)(3) and 11 U.S.C. § 362(l), as to a residential real property in Stockton, California. The movant owns the property and the debtor had been renting the property from the movant.

After the filing of an eviction action against the debtor, the movant obtained a judgment for possession of the property on October 1, 2014.

The automatic stay did not go into effect when the debtor filed the instant bankruptcy case.

11 U.S.C. § 362(b)(22) provides that:

"The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

. . .

subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor."

11 U.S.C. § 362(l) provides that:

"*(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—*

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)
(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)
(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor."

First, the debtor did not make a proper certification under section 362(l) when he filed this petition. He did not certify that under California Law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered. 11 U.S.C. § 362(l)(1)(A). That box is not checked on his petition. Docket 1 at 2.

As noted above, after the filing of an eviction action against the debtor, the movant obtained a judgment for possession of the property on October 1, 2014. Nothing under California law allows the debtor to cure the monetary default that gave rise to the judgment for possession, after that judgment has been

entered. Given the pre-petition judgment for possession, this court is unfamiliar with any legal authority that would allow the debtor to cure the monetary default that gave rise to the judgment, after entry of the judgment.

Second, the debtor's tenancy certification in this case also fails because the debtor has deposited no rent with the court. 11 U.S.C. § 362(l)(1)(B). A November 4, 2014 docket entry reads "Debtor indicates in Certification by a Debtor Who Resides as a Tenant of Residential Property, that Debtor deposited with the clerk any rent that would become due during the 30-day period after the filing of the petition; however, no rent was received."

As provided in 11 U.S.C. § 362(b)(22), then, the automatic stay did not take effect when this case was filed on November 4, 2014.

Third, even if the debtor's tenancy certification in this case was properly made, that would have given the debtor only 30 days under section 362(l)(1), after the filing of this petition, or until December 4, 2014. Importantly, the debtor has not made a further certification under section 362(l)(2), for continuation of the stay beyond the 30-day period.

And, the December 4, 2014 date has passed. This motion is being heard 41 days after the filing of this case.

Thus, even if the stay took effect on the petition date, that stay has expired under section 362(b)(22).

Finally, aside from 11 U.S.C. § 362(b)(22) and (l), 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 October 3, 2014, the debtor filed a chapter 7 case in the United States Bankruptcy Court for the Eastern District of California (Case No. 14-44040). But, the court dismissed that case on October 24, 2014 due to the debtor's failure to timely file petition documents. Bankr. N.D. Cal. Case No. 14-44040, Dockets 4 & 15.

The debtor filed the instant case on November 4, 2014. Notably, the debtor did not disclose the filing of the prior chapter 7 case in this case. The petition he filed in this case does not contain a reference to the prior case. Docket 1 at 2.

The prior chapter 7 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 granted because the automatic stay in the instant case expired in its entirety as to the subject property on December 4, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case

within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

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

4. 09-43132-A-7 TSAR
CDH-10

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
11-24-14 [196]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Hughes Law Corporation, attorney for the trustee, has filed its fourth and final motion for approval of compensation. The requested compensation consists of $11,871.50 in fees, plus $1,150 in fees representing five potentially necessary additional hours of work, at a rate of $230 an hour, and $555.12 in expenses, for a total of $13,576.62.

Even though the additional work may exceed five hours, the movant is willing to cap its fees for remaining work at $1,150. But, if the additional work is less than five hours, the movant will be paid the actual time spent on the additional work. The additional remaining work in the case is anticipated to be appearance at a motion to abandon hearing, resolving any responses to that motion, appearing at the hearing on the instant motion, and addressing unresolved issues pertaining to the final payment from the Barbara Erickson probate estate.

The court approved $104,349.40 in fees and $4,648.86 in expenses in connection with the movant's prior compensation motions. With the instant fees and expenses, the total fees will be $117,370.90 and the total expenses will be $5,203.98, for an aggregate compensation of $122,574.88. $77,899.82 of the fees are being paid by the debtor's insurer with respect to services provided as to already concluded employment discrimination litigation.

This motion covers the period from June 2, 2014 through November 21, 2014, excluding services pertaining to the litigation instituted by Ms. Taylor. The entire period of services is from December 4, 2009 through November 21, 2014.

The court approved the movant's employment as the trustee's attorney on December 8, 2009.

In performing its services, the movant charged hourly rates of $205 (reduced from as much as $230 an hour), $230, $245 (reduced from as much as $380 an hour), and $365.

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) preparing several compensation motions, (2) working on redacting time records to prevent the revealing of litigation strategies, (3) advising the trustee about a final payment from a bequest to the debtor from the will of Barbara Erickson, (4) advising the trustee and addressing issues pertaining to the payment from the debtor's insurer (Monitor Liability Managers) on account of Ms. Taylor's employment discrimination claim against the debtor, (5) preparing and filing a motion to abandon and destroy documents of the debtor.

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. The court will ratify the prior compensation awards on a final basis.

Although the court will approve the $1,150 in fees for additional work to be performed by the movant, the court will ask that the movant file a short declaration upon the completion of that work and payment by the trustee, stating how many hours of services the additional work entailed and how much in fees the movant received from the trustee on account of that work.

5. 14-29540-A-7 ALAN DAVIS — MOTION TO COMPEL ABANDONMENT
DN-1 — 10-28-14 [10]

Tentative Ruling: The motion will be granted.

The hearing on the motion was continued from December 1, 2014. The debtor filed yet another additional declaration in support of the motion. Docket 23. An amended ruling from December 1 follows below.

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 analyser (valued at $16,000).

The bank accounts, the receivables, and the vehicle were claimed as exempt in their entirety. The compressors, AC machine, lift, mechanics tools, and Modius analyser were only partially claimed as exempt, only to the extent of $7,575, leaving $8,425 in nonexempt equity. Nevertheless, these partially-exempted

items are encumbered by a $15,000 claim held by Snap On Tools. Given this, the bank accounts, the receivables, the vehicle, the compressors, the AC machine, the lift, the mechanics tools, and the Modius analyser are of inconsequential value to the estate. Hence, the court will order their abandonment. The motion will be granted.

6. 10-41061-A-7 CONSTANCE AGEE — MOTION TO SET ASIDE FORECLOSURE SALE, RELATED INSTRUMENTS AND AWARD DAMAGES
10-14-14 [40]

Tentative Ruling: The motion will be denied.

The debtor has reopened this case and, in this motion, is seeking the court to set aside a foreclosure sale on a property in North Highlands, California that took place on August 25, 2014, after the debtor received her discharge on November 22, 2010 and the case was closed on December 3, 2010.

The debtor pleads the following "causes of action:"

"1. Violation of 11 U.S.Code Chapter 7 Bankruptcy.
2. Violation of the Fair Debt Collections Practices Act (FDCPA)
15 USC 1692(b)(g)
3. Violation of California Civil Codes SEC 5. Section 2923.5 a(1) (B), 2923.6(f); Section 2924.11., 2923.6a,2,c(1)3(d)(e)2,f,1,2, Sec 9,Section 2923.7,Sec 15 Section 2924.11 a,b; SEC 16 Section 2924.12b; SEC 20 Section 2924.17 a, b; SEC 21. Section 2924.18 (a) (1); SEC 22. Section 2924.19 2,b;
4. Failure to Provide Duty of Care; Senate Bill SB 900(3)
5. Violation of Dual Tracking Protection
6. Failure to provide a Single Point of Contact
7. Cloud on Title
8. CONSTANCE MARIA AGEE TENDERED PRIOR TO SALE."

The respondents named in the motion are Residential Credit Solutions, Inc. and Sage Point Lender Services, LLC.

GP Equities, Inc., AKS Equities, Inc., Residential Credit Solutions, Inc., and Sage Point Lender Services, LLC have filed oppositions to the motion.

The motion will be denied. First, while the debtor's bankruptcy discharge eliminated the debtor's in personam liability on the loan secured by the property, the discharge had no effect on the in rem liability on those loans, *i.e.*, the secured creditor's right to look to the property to satisfy the obligation owed by the debtor. Thus, the foreclosure sale did not violate the bankruptcy discharge.

Second, the relief sought by the debtor requires an adversary proceeding. Fed. R. Bankr. P. 7001 prescribes that adversary proceeding is required in the following instances:

"(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);

. . .

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

. . .

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing."

The debtor is seeking to undo a foreclosure sale, by having the court declare that the sale was invalid, is seeking to recover the property she lost to foreclosure, and is seeking to determine that her interest in the property is superior to the interest of other parties. Such relief, as required by Rule 7001, must be sought via an adversary proceeding. This is a motion and not an adversary proceeding.

Third, even if the debtor were able to seek the relief outlined in her motion via a motion, the court does not have subject matter jurisdiction over any of the claims, as they are brought pursuant to state law and the subject bankruptcy case has been administered already.

This case was filed by the debtor as a chapter 7 proceeding on August 9, 2010. The trustee issued a report of no distribution on September 20, 2010. The debtor received her chapter 7 discharge on November 22, 2010. The case was closed on December 3, 2010. As the debtor's claims are not core because they arise pursuant to nonbankruptcy law, the only conceivable jurisdiction this court could have is "related to" subject matter jurisdiction.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The court does not have "related to" jurisdiction here because the underlying bankruptcy case is no longer being administered. The case was administered over four years ago. Thus, none of the claims here could have an affect on the administration of the debtor's bankruptcy estate.

As this is a bankruptcy court, this court deals only with bankruptcy-related matters. As the debtor's bankruptcy case concluded, the debtor will have to go to federal district court or state court to apply for the remedies she is seeking. Accordingly, the motion will be denied.

7. 10-41061-A-7 CONSTANCE AGEE — MOTION FOR PRELIMINARY INJUNCTION, ETC. 11-25-14 [54]

Tentative Ruling: The motion will be denied.

The debtor is seeking a preliminary injunction, "staying any and all actions by the defendant relating to the pending hearing or a MOTION TO SET ASIDE FORCLOSURE SALE, RELATED INSTRUMENTS, AND AWARD DAMAGES until after this Court rules upon Plaintiffs challenge to the propriety of the wrongful foreclosure sale of the real property located at 4136 Stonecutter Way, North Highlands, CA

95660."

First, to the extent the debtor is seeking reinstatement of the automatic stay, this request will be denied. This case was filed by the debtor as a chapter 7 proceeding on August 9, 2010. The trustee issued a report of no distribution on September 20, 2010. The debtor received her chapter 7 discharge on November 22, 2010. The case was closed on December 3, 2010.

The automatic stay as to the debtor expired when the debtor received her discharge, on November 22, 2010. The stay as to the estate expired when the case was closed on December 3, 2010. See 11 U.S.C. § 362(c)(2)(A)&(C). Nothing allows this court to reinstate the automatic stay as to the debtor after the debtor has received a bankruptcy discharge, let alone after the case is closed.

More, when this case was reopened, the automatic stay was not reinstated. No legal authority supports such interpretation of 11 U.S.C. § 362.

Second, to the extent the debtor is seeking a preliminary injunction, aside from the automatic stay of 11 U.S.C. § 362(a), as mentioned in its ruling on the debtor's motion to set aside the foreclosure sale, such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001 prescribes that adversary proceeding is required in the following instances:

"(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

. . .

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing."

Hence, for the debtor to be seeking a preliminary injunction from this court, the debtor would have to do this via an adversary proceeding. This is not an adversary proceeding. This is a motion. The court is not permitted to award the relief sought via a motion.

Third, even if the court were permitted to adjudicate the debtor's request for a preliminary injunction in a motion, the court will deny the debtor's request for a preliminary injunction, to allow for her to prosecute her claims against Residential Credit Solutions, Inc. and Sage Point Lender Services, LLC. See Docket 40. As ruled on by the court on the debtor's motion to set aside the foreclosure sale, this court has no subject matter jurisdiction over the claims pleaded by the debtor.

"Under Winter, a preliminary injunction movant must show, inter alia, that 'the balance of equities tips in his favor.' 555 U.S. at 20, 129 S.Ct. 365. But if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two Winter factors are satisfied. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir.2011) (emphasis added). But the serious questions approach is inapplicable in this case because, as explained above, Shell demonstrated, and the district court found, a likelihood of success on the merits."

Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir. 2013) (referencing Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)).

Here, however, as this court has no subject matter jurisdiction over the debtor's claims, the court cannot assess any aspect of the merits of those claims. This motion then will be denied.

8. 13-34461-A-7 KATHLEEN DUNCAN
MPD-10

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
11-24-14 [94]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Michael Dacquisto, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $27,055 in fees and $1,688.95 in expenses, for a total of $28,743.95. This motion covers the period from November 13, 2013 through December 15, 2014. The court approved the movant's employment as the trustee's attorney on November 20, 2013. In performing its services, the movant charged hourly rates of $175 and $350.

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 to sell real property, (2) preparing and filing motion to approve sale, (3) preparing and filing motion to abandon property of the estate, (4) negotiating to resolve disputes with the trustee of the bankruptcy case of the debtor's former spouse, Ronald Duncan, Case No. 12-33467-A-7, (5) preparing and filing a motion to substantively consolidate this case with the bankruptcy case of the debtor's former spouse, Ronald Duncan, Case No. 12-33467-A-7, (6) advising the trustee about the general administration of the estate, 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.

The court reminds the movant to conspicuously state in its motion papers whether this is an interim or final compensation motion.

9. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE
MPD-11 — 11-24-14 [100]

Tentative Ruling: The hearing on this motion will be continued.

The chapter 7 trustee, J. Michael Hopper, has filed his first and final motion for approval of compensation. The requested compensation consists of $9,690 in fees and $0.00 in expenses. The services for the sought compensation were provided from November 13, 2013 through November 21, 2014. The sought compensation represents 32.3 hours of services at an hourly rate of $300.

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

The movant made $233,147.58 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $14,907.38 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $9,157.38 (5% of the next $950,000 (or $183,147.58)). Hence, the requested trustee fees of $9,690 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." The movant's services included, without limitation: (1) analyzing the debtor's assets, (2) evaluating the value of the assets, including the debtor's breach of fiduciary duty claim against the bankruptcy estate of her former spouse, (3) negotiating with the estate of the debtor's former spouse about the division of the proceeds from the sale of properties owned by the debtor and her former spouse jointly, (4) negotiating with the estate of the debtor's former spouse about consolidation of the two cases, (5) directing the estate's attorney to obtain court approval for the sale of real properties, and (6) employing legal and financial professionals for the estate.

The compensation will not be approved unless and until the trustee files his final report and account. The court is not willing to approve the instant compensation without having reviewed the trustee's final report and account. While the court realizes that this estate and the estate of the Ronald Duncan case are being substantively consolidated, before the movant's administrative obligations cease, he should still file a final report and account with the court. Accordingly, the court will continue the hearing on this motion to give opportunity to the movant to file his final report and account.

10. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO CONSOLIDATE CASES
MPD-9 — 11-24-14 [89]

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 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 chapter 7 trustee here requests the court to approve an agreement with the chapter 7 estate of Ronald Duncan, the debtor's former spouse, Case No. 12-33467-A-7. An identical motion has been filed in the Ronald Duncan case. Under the agreement, the two estates have agreed to:

- substantive consolidation of the two cases, retroactive to the petition date of the Ronald Duncan case (July 20, 2012),

- designating Ronald Duncan's case as the lead case and Kathleen Duncan's case as the member case,

- authorizing the trustee in the Ronald Duncan case, Susan Smith, to file an amended creditor matrix to include the creditors not in the lead case, to file proofs of claim filed in the member case but not filed in the lead case,

- the professionals in the member case shall file and have their final compensation motions heard at the same time this motion is being heard,

- if and when the professionals in the member case are allowed their compensation, the trustee of the member case shall make a final distribution pursuant to the allowance, and turn over the balance of the funds and all other assets of the member case, to the trustee of the Ronald Duncan estate; thereafter, the trustee of the member case shall resign as trustee,

- all property of the consolidated estate shall be deemed community property for all purposes, including distributions under 11 U.S.C. § 726(c),

- the two estates shall exchange mutual releases, including a release of Kathleen Duncan's breach of fiduciary duty claim against Ronald Duncan.

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).

"Orders of substantive consolidation combine the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat them as though they belong to a single entity."

Alexander v. Compton (In re Bonham), 229 F.3d 750, 764 (9th Cir. 2000)

The principal Ninth Circuit case that deals with substantive consolidation is Alexander v. Compton (In re Bonham), 229 F.3d 750 (9th Cir. 2000). In Bonham the Ninth Circuit adopts the substantive consolidation standard promulgated by the Second Circuit. Bonham, at 766. In deciding whether to order substantive consolidation, courts must decide whether: (1) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity

in extending credit;" or (2) "the affairs of the debtor are so entangled that consolidation will benefit all creditors." Id. (quoting In re Augie/Restivo Baking Co., Ltd., 860 F.2d 515, 518 (2nd Cir. 1988)).

On July 20, 2012, Ronald Duncan commenced bankruptcy case No. 12-33467-A-7 by filing a voluntary chapter 11 petition. On April 30, 2013, his case was converted to chapter 7. Susan Smith was appointed chapter 7 trustee for Ronald Duncan's bankruptcy estate.

On November 1, 2012, after 35 years of marriage, Ronald and Kathleen Duncan separated. On August 29, 2013, Kathleen Duncan filed Proof of Claim No. 19-1 in Ronald's case for breach of fiduciary duty arising from the alleged dissipation of marital assets by investing in Nigerian oil contracts from which to date there has been no return.

On November 12, 2013, Kathleen Duncan commenced bankruptcy Case No. 13-34461-A-7 by filing a voluntary chapter 7 petition. J. Michael Hopper was appointed chapter 7 trustee for Kathleen Duncan's bankruptcy estate.

The breach of fiduciary duty claim was last amended on February 21, 2014, when Trustee J. Michael Hopper filed Proof of Claim No. 19-5 in the amount of approximately $4,200,000.

On May 10, 2014, Ronald Duncan passed away. Before his death, he disputed the breach of fiduciary duty claim, contending that Kathleen Duncan was a knowing and willing participant in the Nigerian oil contracts investment.

Ronald Duncan's last will and testament devised the entirety of his personal estate, then consisting of about $34,000 exemptions allowed in his bankruptcy case, to Kathleen Duncan.

As Ronald Duncan passed away within 180 days of Kathleen Duncan's petition date, that inheritance is now property of Kathleen Duncan's bankruptcy estate. See 11 U.S.C. § 541(a)(5)(A).

Under California law, because the aggregate value of Ronald Duncan's personal estate is less than $100,000, title may pass without a probate proceeding six months after the date of Ronald Duncan's death. This would be November 10, 2014. See Cal. Prob. Code § 13200.

The primary source of the funds invested into the Nigerian oil contracts was from Carmichael Construction Company, Inc., a corporation through which Ronald and Kathleen Duncan, as both officers and directors, jointly operated a contracting business. While conflicting representations have been made in the schedules as to whether the construction company stock was owned by Ronald, Kathleen, or both of them, it is undisputed that through her petition date, November 12, 2013, Kathleen remained an officer and director of the company.

Substantially all of the assets of both bankruptcy estates have been liquidated. Both trustees have sold jointly owned real property. The approximate $190,000 aggregate net proceeds from those sales were divided equally between the two estates with each receiving about $95,000.

A compromise between the trustee of the Ronald Duncan estate and Ronald Duncan's sister, Renee Duncan, is expected to result in a distribution of about $1,000,000 from a family trust to that estate. After payment of anticipated administrative expenses, it is estimated that collectively there will be about

$1,100,000 to disburse to priority and general unsecured creditors.

The two estates share the same tax creditor base, the Franchise Tax Board and the Internal Revenue Service. All of the claims asserted by the FTB and the IRS are for income taxes and related penalties, interest and costs, for tax years during which Ronald and Kathleen Duncan were married and living together.

The secured portions of the FTB's claim for 2010 were paid post-petition by the trustee of the Ronald Duncan estate from proceeds generated by the sale of real property jointly owned by Ronald and Kathleen Duncan.

A subsequently filed return will likely result in withdrawal of a portion of an assessment against Kathleen Duncan for 2012. What remains of those filed proofs of claim, substantially all of which are based on the same joint obligations, and the anticipated distribution, may be summarized as follows:

FTB 2009 Tax $115,002 (Ronald Duncan)	$115,002 (Kathleen Duncan)
FTB 2009 Tax $10,200 (RD)	$15,233 (KD)
FTB 2010 Tax $88,204 (RD)	$88,204 (KD)
FTB 2010 Interest $4,058 (RD)	$7,767 (KD)
IRS 2011 Tax 2,014 (RD)	$2,014 (KD)
IRS 2011 Interest $0.00 (RD)	$25 (KD)
FTB 2012 Tax $902 (RD)	$0.00 (KD)
Total Priority Claims $220,380 (RD)	$228,245 (KD)
Net to Priority & Below $1,090,778 (RD)	$26,317 (KD)
Total Priority Claims ($220,380 (RD))	($228,245 (KD))
Net to General Unsecured $870,398 (RD)	$0.00 (KD)

The trustee of the Kathleen Duncan case believes that there may be little value in Kathleen Duncan's breach of fiduciary duty claim against Ronald Duncan because she "could be determined" to have been an active participant in the construction business they both ran. The trustee of the Kathleen Duncan case also believes that the Ronald Duncan estate "is unlikely to have sufficient funds" to pay the breach of fiduciary claim "in any significant amount." Docket 89 at 8-9.

Further, consolidation is warranted here because until their separation on November 1, 2012, Ronald and Kathleen Duncan were married for 35 years and their creditors, in either case, dealt with both Duncans as a single economic unit. Importantly, both Ronald and Kathleen Duncan were involved in running the construction business, as to which much of their debt is related.

Although Kathleen Duncan did not file for bankruptcy until November 12, 2013, still only approximately one year after her separation from Ronald Duncan, he filed his bankruptcy case on July 20, 2012, approximately three and one-half months before they separated. That is why "the proofs of claim primarily consist of overlapping claims on account of the tax claims and the trade credit

claims, resulting from Ronald and Kathleen's close affiliation with one another, with their joint management of [the construction business] and with their guaranty of certain [construction business] obligations." Docket 89 at 10. "Two of the proofs of claim show joint judgments against [the construction business], Ronald and Kathleen." Id.

The other factor of Bonham - entanglement - is also implicated. "The time, effort and expense necessary to try and unscramble the affairs of Ronald and Kathleen will be substantial. Undertaking these tasks will consume a substantial portion of the estate's assets and reduce the funds available for lower level creditors. In addition, it may not be possible to finally determine, with any accuracy, the correct result, in particular based on the fact that Ronald has passed away and cannot testify on any of these issues in dispute." Docket 89 at 10.

Although "[t]he principal difference is an approximate $78,000 [construction company] obligation to Wells Fargo Bank that was guaranteed by Ronald but not by Kathleen[,] [b]ut for the approximate $2 million used to invest in the Nigerian oil contracts, [the construction company] would have had ample resources to pay that claim[,] [and] [i]ncluding Wells Fargo Bank in a distribution pool consisting primarily of [construction company] derived debt is equitable." The court also notes that there is no reason not to construe Ronald Duncan's guaranty to Wells Fargo as a community debt.

"Retroactively setting Kathleen's petition date to the same as Ronald's will also place all general unsecured creditors on the same footing with respect to the rate of accrued interest, since the applicable rates exceed the federal rate. In addition, to the extent that the priority tax claims require further investigation or objection, duplication of effort will be avoided."

Docket 89 at 10.

"Those creditors will also benefit from an approximate $14,000 reduction of the interest component of the priority tax claims that would result from moving Kathleen's petition date back 16 months to Ronald's petition date. If the IRS were to amend its proof of claim based on the FTB audit, then an earlier petition date would negate about $32,000 of the priority portion of the amended claim."

Docket 89 at 11.

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given:

- the weaknesses of the breach of fiduciary duty claim,

- that "[s]ubstantially all of the general unsecured claims directly arise from the joint operation of [their construction company]," which Ronald and Kathleen Duncan were both involved in running (Docket 89 at 11),

- that the creditors of Ronald and Kathleen Duncan treated them as a single economic unit and did not rely on their separate identity for 35 years, just until approximately two years ago,

- that their affairs are so entangled, after 35 years of marriage, that consolidation will benefit all creditors,

- that Ronald Duncan has passed away and any further litigation between the two estates would waste valuable resources that should instead be paid to creditors,

- that Ronald Duncan had already filed for bankruptcy by the time they separated, and

- 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 of both estates and the estates themselves. The court may give weight to the opinions of the trustees, 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. The agreement will be approved.

As mentioned in the ruling on his motion for compensation, the trustee in the Kathleen Duncan estate shall file a final report and distribution (or a similar document accounting for his receipts and distributions) for his role in the administration of the Kathleen Duncan estate, prior to satisfying the terms of the settlement agreement.

11. 12-33467-A-7 RONALD DUNCAN — MOTION TO CONSOLIDATE CASES
DNL-13 — 11-17-14 [278]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee in this case requests the court to approve an agreement with the chapter 7 estate of Kathleen Duncan, the debtor's former spouse, Case No. 13-34461-A-7.

As a substantially identical motion has been filed in the Kathleen Duncan case, this motion will be granted in accordance with the court's ruling on that motion, which is also being heard on this calendar. The court incorporates its ruling on the motion to approve the same agreement in the Kathleen Duncan case here.

THE FINAL RULINGS BEGIN HERE

12. 13-34805-A-7 CHARLES/JUDY BOWMAN — MOTION TO ABANDON
TAA-3 — 11-5-14 [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 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 a real property in Clio, California. The property is over-encumbered.

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.

Although the trustee had received an offer of $685,000 for the purchase of the property, the offered price was insufficient to pay all encumbrances against the property. Its encumbrances total approximately $841,455, consisting of a first mortgage for approximately $505,451 in favor of Wells Fargo Home Mortgage and a second mortgage for approximately $336,003 in favor of Citimortgage. Docket 1, Schedule D.

And, the trustee discovered that at least one of the principal lienholders would refuse to negotiate a short-sale of the property while the bankruptcy case is still pending.

The trustee has marketed the property for "many months," without success.

Given this, the court is persuaded that the property is of inconsequential value to the estate. The motion will be granted.

13. 14-24810-A-7 BLANE/JENETTE PARROTT — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 11-17-14 [25]
WELLS FARGO BANK, N.A. VS.

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2013 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 May 7, 2014 and a meeting of creditors was first convened on June 4, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 4. 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 July 7, 2014, 30 days after the initial meeting of creditors. See also Fed. R. Bankr. P. 9006(a)(1)(C) (providing that "if the last day [in a period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

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 July 7, 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.

14. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION TO APPROVE CORRECTED AUCTIONEER'S REPORT AND FEES
TAA-8 — 11-13-14 [72]

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 debtors, the creditors, the United States 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 is asking the court to approve corrected compensation for West Auctions, auctioneer for the trustee, pertaining to a sale completed on April 3, 2014.

While the court approved West's compensation by an order entered on June 30, 2014 (Docket 59), the trustee is now asking the court to approve corrected compensation as follows:

- decreasing West's compensation from $1,102.38 in fees and $0.00 in expenses to $1,022.38 in fees and $0.00 in expenses; and

- authorizing the estate to reimburse $320 to West for an uncollected $400 fee from a defaulted overbidder.

After West charged the $400 fee from the overbidder's credit card and turned the funds to the estate, the overbidder challenged the charge with the credit card company and prevailed. The $320 reimbursement reflects the $80 difference between the compensation received by West based on the June 30 order ($1,102.38) and the compensation West should have received given the decrease of gross sale proceeds from $5,511.88 to $5,118.88 ($1,022.38).

The court will amend its June 30 order consistent with the foregoing. The motion will be granted as provided in this ruling.

15. 13-23517-A-7 TRACY GATEWAY, LLC — MOTION FOR EXAMINATION
FWP-1 — 9-22-14 [114]

Final Ruling: The parties have continued the hearing to January 12, 2015 at

10:00 a.m.

16. 14-28520-A-7 CFH-2 VS. PROFESSIONAL COLLECTION CONSULTANTS — CARLOS SAGASTUME AND DINORA SURBER — MOTION TO AVOID JUDICIAL LIEN 10-27-14 [24]

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

The motion will be granted.

The hearing on this motion was continued from December 1, 2014 for the movant to supplement the record. The movant has filed a supplemental declaration. An amended ruling from December 1, 2014 follows below.

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 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 $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. The debtor has established entitlement to the claimed exemption. Docket 41 ¶¶ 8, 11.

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).

17. 14-28520-A-7 CFH-3 VS. ASSET ACCEPTANCE L.L.C. — CARLOS SAGASTUME AND DINORA SURBER — MOTION TO AVOID JUDICIAL LIEN 10-27-14 [29]

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

The motion will be granted.

The hearing on this motion was continued from December 1, 2014 for the movant to supplement the record. The movant has filed a supplemental declaration. An amended ruling from December 1, 2014 follows below.

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 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 $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. The debtor has established entitlement to the claimed exemption. Docket 43 ¶¶ 8, 11.

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

18. 14-28520-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]

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

The motion will be granted.

The hearing on this motion was continued from December 1, 2014 for the movant to supplement the record. The movant has filed a supplemental declaration. An amended ruling from December 1, 2014 follows below.

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 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 $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. The debtor has established entitlement to the claimed exemption. Docket 45 ¶¶ 8, 11.

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

19. 13-30835-A-7 PA-7

RICK HENDRICKS

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 11-17-14 [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.

Pino & Associates, attorney for the trustee, has filed its first and final motion for approval of compensation.

Creditor Diane Dominguez has filed a declaration in support of the motion.

The requested compensation consists of $26,960 in fees and $1,457.77 in expenses, for a total of $28,417.77. This motion covers the period from December 24, 2013 through November 17, 2014. The court approved the movant's employment as the trustee's attorney on January 7, 2014. In performing its services, the movant charged hourly rates of $125, $250, and $350.

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 interest in a trust, (2) communicating with the trustee of the trust, (3) investigating distributions made by the trust and asking the debtor to turn over to the trustee $47,500 in distributions he received, (4) analyzing proofs of claim, (5) communicating with the debtor's two former spouses about their claims and other issues pertaining to the case, (6) advising the trustee about the general administration of the estate, 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.

20. 14-30235-A-7 TERESITA BRISENO — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 11-10-14 [17]
AMERICAN HONDA FINANCE CORP. 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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2012 Honda Civic. The vehicle has a value of $10,750 ($12,000 in Schedule B) and its secured claim is approximately $19,390.

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 December 2, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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.

21. 11-43543-A-7 KENNETH/LORI CRUZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-7 — 11-17-14 [121]

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 second and final motion for approval of compensation. The requested compensation consists of $3,525 in fees and $110.08 in expenses, for a total of $3,635.08. This motion covers the period from October 12, 2013 through September 5, 2014. The court approved the movant's employment as the trustee's attorney on November 15, 2011. In performing its services, the movant charged hourly rates of $75, $175, $225, $275, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the trustee with the analysis and objection to several proofs of claim, (2) communicating with some of the

creditors that filed proofs of claim about the merits of their claims, (3) preparing a letter to one of the creditors whose proof of claim was being analyzed after unsuccessful prior communication, (4) preparing orders on compensation motions, and (5) preparing and filing 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.

22. 14-29952-A-7 PAULA COLLINS — MOTION TO AVOID JUDICIAL LIEN
CLH-1
VS. CAPITAL ONE BANK (USA), N.A. — 10-10-14 [10]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $3,806.77 on March 29, 2011. The abstract of judgment was recorded with San Joaquin County on July 7, 2011. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $145,000 as of the date of the petition. The unavoidable liens total $271,076 on that same date, consisting of a single mortgage in favor of Financial Freedom. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of $1.00 in Schedule C.

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

23. 14-30053-A-7 WALTER FLETSCHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 11-5-14 [18]

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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2005 Thunderbird Formula 330SS boat. The movant has produced evidence that the vehicle has a value of $62,800 and its secured claim is approximately $86,053. Docket 20 at 3.

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. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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.

24. 14-29955-A-7 TAFT PETERSEN — MOTION TO COMPEL ABANDONMENT 10-29-14 [12]
DBJ-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Chico, California. The entire equity in the property has been claimed as exempt.

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 debtor has scheduled the value of the property at $320,000. The property is encumbered by a single deed of trust in favor of Nationstar Mortgage in the

amount of $300,000. Also, the debtors have exempted $20,000 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(5).

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

25. 14-28457-A-7 JASON MENDENHALL — MOTION TO AVOID JUDICIAL LIEN
DLM-2
VS. THE GOLDEN 1 CREDIT UNION — 10-28-14 [19]

Final Ruling: This motion will be dismissed as moot because the debtor has filed another motion to avoid the lien of the movant - in light of the court's December 1, 2014 ruling (Docket 26) - set for hearing on January 12, 2015 at 10:00 a.m.

26. 14-30159-A-7 RALPH/MICHELE TROUTE — MOTION TO REDEEM
RAH-02 — 12-1-14 [19]

Final Ruling: This motion has been voluntarily dismissed by the movant. Docket 36.

27. 14-30159-A-7 RALPH/MICHELE TROUTE — MOTION TO COMPEL ABANDONMENT
RAH-1 — 12-1-14 [23]

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

28. 14-27860-A-7 ROBERT/JULIE KNOX — MOTION TO AVOID JUDICIAL LIEN
BLG-4
VS. STANLEY R. EDELMAN — 11-19-14 [50]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service accompanying the motion, the motion was not served on the respondent creditor. It was served only on his attorneys, both state court and counsel who has appeared on the respondent's behalf in connection with prior motions in this proceeding.

However, Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by a motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. But, nothing in Fed. R. Bankr. P. 7004 permits service on the respondent's attorneys to the exclusion of the respondent. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

29. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO EXTEND DEADLINE
PA-15 — 11-14-14 [226]

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 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.

Creditor Leo Speckert as trustee of California Capital Loans, Inc., Profit Sharing Plan, moves for a 119-day extension, from November 14, 2014 to March 13, 2015, of the deadline for filing complaints to determine the dischargeability of debts pursuant to 11 U.S.C. § 523.

Fed. R. Bankr. P. 4007(c) provides that the court may extend the deadline for filing section 523 complaints for cause. The motions must be filed before the deadlines expire.

The deadline for filing 11 U.S.C. § 523 complaints, pursuant to a prior extension of the deadline by the court, was November 14, 2014. Docket 198. This motion is timely as it was filed on November 14, 2014.

The movant is asking for extension of the deadline because he needs more time to determine whether filing of a 11 U.S.C. § 523 complaint is warranted. Particularly, the movant has been seeking to foreclose on property that is in a trust, as to which the debtor and his daughter have asserted rights that appear to be inconsistent with representations the debtor made in obtaining a loan with the movant pre-petition. The movant needs more time to determine the exact nature of the assertions of the debtor and his daughter as to the property.

On August 15, 2013, the debtor's daughter filed a state court complaint against the movant, to quiet title of the property and set aside a deed of trust securing the movant's claim. The movant filed a summary judgment against the debtor's daughter and that motion was granted. The movant is now waiting for a judgment to be entered on his behalf.

Given the still ongoing state court action pertaining to the property and the apparent inconsistencies in the debtor's representations in connection with his obtaining the loan from the movant, cause for further extension of the deadline exists. The motion will be granted and the deadline will be extended to March 13, 2015.

30. 14-25963-A-7 LOUIS/JOYCE MILLIGAN — MOTION TO AVOID JUDICIAL LIEN 11-10-14 [27]
MWB-2

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 Debtor Louis Milligan in favor of The CIT Group WFS Financial, Inc. for the sum of $9,801.65 on April 19, 1996. The abstract from that judgment was recorded with Shasta County on November 18, 1996.

The judgment was renewed on March 21, 2005 for $16,366.90. The abstract from the renewed judgment was recorded with Shasta County on March 23, 2006. That lien attached to the debtor's residential real property in Redding, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $200,000 as of the date of the petition. The unavoidable liens total $204,000 on that same date, consisting of a single mortgage in favor of Springleaf. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C.

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

31. 14-30463-A-7 JOSHUA BENNETT — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 11-5-14 [9]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2011 Ford Fusion 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 October 22, 2014 and a meeting of creditors was first convened on November 19, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 19.

The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. 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 November 19, 2014, the date of 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 November 19, 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 19, 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.

32. 14-27980-A-7 GKUBI SMART — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
TOYOTA MOTOR CREDIT CORP. VS. — 11-4-14 [25]

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, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2012 Toyota Camry. The vehicle has a value of $15,358 ($10,247 in Amended Schedule B, Docket 62) and its secured claim is approximately $21,930.

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. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. Docket 67 at 2.

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.

33. 14-27980-A-7 GKUBI SMART — MOTION TO EXTEND DEADLINE 11-14-14 [38]
HSM-2

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 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 an 88-day extension, from December 1, 2014 to February 27, 2015, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was December 1, 2014. The motion was filed on November 14, 2014. Thus, the motion complies with the temporal requirements of the rule.

The trustee has noticed inconsistencies and omissions in documents the debtor has filed with the court. Specifically, the debtor has not listed his anticipated tax refund of $5,000 on Schedule B. Also, after several times stating under the penalty of perjury that he does not own a real property, including in his schedules and in an application for waiver of the filing fee, the debtor filed Amended Schedules A and D, listing a real property with what appears to be over $100,000 in equity. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to February 27, 2015.

34. 14-27980-A-7 GKUBI SMART — MOTION TO EXTEND TIME 11-14-14 [48]
HSM-3

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 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 asks for an 88-day extension, from November 17, 2014 to February 13, 2015, of the deadline for objecting to the debtor's exemptions. The debtor has not provided a spousal waiver to claim the exemptions under Cal. Civ. Proc. Code § 703.140(b) and the trustee needs additional time to investigate the debtor's financial affairs.

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

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

The meeting of creditors was concluded on October 16, 2014. As the 30-day deadline fell on November 15, 2014, a Saturday, the deadline was moved to November 17, 2014, the following Monday. Fed. R. Bankr. P. 9006(a)(1)(C) (providing that "if the last day [in a period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

This motion was filed on November 14, 2014, before the expiration of the deadline. Hence, the motion is timely.

Turning to the merits of the motion, in addition to the lack of a spousal waiver, the trustee has noticed inconsistencies and omissions in documents the

debtor has filed with the court. Specifically, the debtor has not listed his anticipated tax refund of $5,000 on Schedule B. Also, after several times stating under the penalty of perjury that he does not own a real property, including in his schedules and in an application for waiver of the filing fee, the debtor filed Amended Schedules A and D, listing a real property with what appears to be over $100,000 in equity. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, there is cause for the requested extension. The deadline for objecting to the debtor's exemptions will be extended to February 13, 2015.

35. 14-25783-A-7 THOMAS SAYLES — MOTION TO AVOID JUDICIAL LIEN
HLG-1 — 11-10-14 [27]
VS. STOHLMAN AND ROGERS, INC.

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 Stohlman & Rogers, Inc. for the sum of $25,554.72 on February 27, 2014. The abstract of judgment was recorded with Sutter County on March 6, 2014. That lien attached to the debtor's residential real property in Marysville, 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 $165,000 as of the date of the petition. The unavoidable liens total $114,069 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Amended 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).

36. 14-28593-A-7 WILLIAM NAHORN — MOTION TO EXTEND DEADLINE
HSM-2 — 11-14-14 [21]

Final Ruling: This motion has been resolved by a stipulation that has been approved by the court. Docket 30.