UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 13, 2014 at 10:00 a.m.

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

1, 2, 3, 10, 16, 17, 18, 19

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose the 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 FEBRUARY 10, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 27, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 3, 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.	13-35300-A-7 OAG-1	SERGEY GAPONYUK AND MAJA BANEY	MOTION TO APPOINT 12-9-13 [11]

Tentative Ruling: The motion will be granted

The debtors are asking that the court appoint the debtor Sergey Gaponyuk as next friend or guardian ad litem for his wife and co-debtor, Maja Baney, under Rule 1004.1.

Fed. R. Bankr. P. 1004.1 provides that "the court shall appoint a guardian ad litem for . . . incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the . . . incompetent debtor." "If an . . . incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the . . . incompetent person. An . . . incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem." Fed. R. Bankr. P. 1004.1. In determining whether a person is incompetent, the court turns to state law.

Cal. Prob Code § 811 provides that "(a) [a] determination that a person is of unsound mind and lacks the capacity to make a decision or do a certain act . . . shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:
(A) Level of arousal or consciousness.
(B) Orientation to time, place, person, and situation.
(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:
(A) Short- and long-term memory, including immediate recall.
(B) Ability to understand or communicate with others, either verbally or otherwise.
(C) Recognition of familiar objects and familiar persons.
(D) Ability to understand and appreciate quantities.
(E) Ability to reason using abstract concepts.
(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
(A) Severely disorganized thinking.
(B) Hallucinations.
(C) Delusions.
(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the

individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question."

The supporting declaration by the debtor states that the co-debtor has dementia and "does not have the ability to understand what is going on with her." Docket 13 ¶ 3. The letter from Boris Zhalkovsky, M.D., attached to the debtor's declaration, corroborates this assessment.

2.	13-34707-A-7	ALBERTO MARTINEZ AND	MOTION FOR
	VVF-1	MARIA ESPINOZA	RELIEF FROM AUTOMATIC STAY
	AMERICAN HONDA FINANCE CORP. VS.		12-19-13 [17]

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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2012 Honda CRV. The movant has produced evidence that the vehicle has a value of $22,025 and its secured claim is approximately $25,616.

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 13, 2013.

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 is depreciating in value.

3. 13-31715-A-7 THE BROILER, INC. MOTION TO EMPLOY
SLF-2 12-23-13 [30]

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

The motion will be granted.

The chapter 7 trustee requests authority to employ West Auctions as auctioneer of the estate. West will assist the estate with the sale of restaurant kitchen equipment, furniture, and miscellaneous office equipment at an online auction. The proposed compensation arrangement is a 10% commission along with reimbursement of reasonable expenses incurred in preparing the property for sale, including transportation and storage expenses. In addition, West will charge buyers paying with a credit card a 13% buyer's premium and buyers paying in cash a 10% buyer's premium.

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

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

4. 13-31715-A-7 THE BROILER, INC. MOTION TO SELL, APPROVE AGREEMENT AND PAY COMPENSATION TO AUCTIONEER
SLF-3 12-23-13 [35]

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

The chapter 7 trustee requests: (1) authority to sell at an online auction free and clear of liens the estate's interest in restaurant kitchen equipment, furniture, and miscellaneous office equipment; (2) waiver of the 14-day period of Fed. R. Bankr. P. 6004(h); (3) the court to approve an agreement with the secured creditor for the division of the net sale proceeds; and (4) approval of payment of the compensation and expenses to the auctioneer.

The debtor operated a restaurant at 1201 K Street in Sacramento, California. The property to be sold has a scheduled value of $60,000, while the estate's auctioneer has valued the property at $25,000. The property is subject to a secured claim for $282,725.60 in favor of Walter H. Harvey, Trustee UDT DTD 1/24/81. The agreement between Mr. Harvey and the trustee is that they split

evenly the net sales proceeds (defined as gross sales price minus auctioneer commission and expenses).

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 sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given Mr. Harvey's consent to the sale. The sale is in the best interests of the creditors and the estate. The sale will be approved only free and clear of Mr. Harvey's lien. The court will waive the 14-day period of Rule 6004(h).

The court will approve the estate's agreement with Mr. Harvey as well. On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the trustee is not aware of any estate claims against Mr. Harvey and given Mr. Harvey's consent to the sale and agreement to share the net sales proceeds equally with the estate, the agreement with Mr. Harvey is equitable and fair.

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

However, the court will deny approval of the auctioneer's compensation and reimbursement of expenses. The court cannot assess the reasonableness and necessity of compensation until it knows its amount. Because the sale has not taken place yet, the court cannot make an 11 U.S.C. § 330(a) determination of the requested compensation and expenses for the auctioneer.

5. 13-33618-A-7 CAROLE BAIRD — MOTION FOR
JTK-1 — RELIEF FROM AUTOMATIC STAY
SCOTT B. LEE VS. — 11-14-13 [26]

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

The hearing on this motion was continued from December 16. The ruling below takes into account the last response filed by the trustee on December 30, 2013.

The movant, Scott Lee, seeks relief from the automatic stay as to the prosecution of a pre-petition state court action against the debtor, and as to real property in Sacramento, California and a boarding kennel business (Creekside Pet Resort, Inc.). The debtor lives and operates the business at the real property.

The movant is the holder of a $1.213 million note secured by the real property and the business.

The trustee does not oppose the granting of relief from stay as to the real property, but he opposes relief from stay as to the business, given that the movant perfected his security interest in the business within 90 days of the filing of the petition.

The real property has a value of $600,000 in Schedule A and the business has a value of $9,737.33 ($8,137.33 in bank accounts, $500 in furniture, $500 in inventory, $600 in tools) in Schedule B. Docket 17. Both the real property and business are encumbered by claims totaling approximately $1,302,085. The movant's deed is the only deed against the real property and business, securing a claim for $1,213,503. The remaining encumbrances are unpaid property taxes against the real property, totaling approximately $88,582.

As to the estate, the movant's security interest in the business may be avoidable and the trustee desires to avoid that interest and administer the assets of the business. The UCC Financing statement for the business was not filed until August 30, 2013. Docket 28, Ex. B. Hence, the court will deny relief from stay as to the business.

The court concludes that there is no equity in the real property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee does not oppose the granting of relief from stay as to the real property.

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

The movant has not shown cause why the court should lift the stay to permit a judicial foreclosure of the property. Given that this is a chapter 7 liquidation proceeding and that the debtor uses the real property as her residence, the court is not persuaded that judicial foreclosure of the real property is warranted. The court will then deny relief from stay as to the continuation of the state court action.

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

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

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

6. 12-35419-A-7 FAITH MALCOLM — MOTION TO SELL
JRR-1 — 12-3-13 [39]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $120,000 the estate's interest in real property in Sacramento, California to LOA Properties. This is a short sale. The estate will generate $15,000 from the sale in the form of a "carve out and/or buyer's premium fee." The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and for authority to pay a 6% real estate commission, along with a 1% short sale negotiation fee.

The property is not being sold free and clear of liens. The trustee proposes to pay U.S. Bank, the first mortgagee on the property, $109,828.11 in full satisfaction of its claim. The trustee has obtained an acknowledgment of satisfaction of judgment from Discover Bank, which held a judicial lien against the property in the amount of $11,698.01. The trustee has obtained an acknowledgment of satisfaction of judgment from Citibank, which held a judicial lien against the property in the amount of $8,203.94. Taxes and utility liens will be paid in full from escrow.

U.S. Bank has filed a limited opposition, stating that the trustee's calculations in the motion make no sense because after paying the $15,000 carve out and/or buyer's premium fee, there will not be sufficient funds to pay the proposed $109,828.11 to U.S. Bank. U.S. Bank also says that it has not yet agreed to accept the $109,828.11 in full satisfaction of its claim secured by the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The sale will generate some proceeds for distribution to creditors of the estate. The $15,000 carve out and/or buyer's premium fee will not come out of the sales price. As the court understands the proposed transaction, this is an additional fee to be paid by the buyer. Thus, there are sufficient funds for U.S. Bank to be paid the proposed $109,828.11.

The sale will be conditionally approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The condition is that U.S. Bank agrees to accept the proposed $109,828.11 from the sale in full satisfaction of its lien on the property. If U.S. Bank does not agree to accept $109,828.11 in full satisfaction of its claim, the sale will not be approved.

Assuming the sale is approved, the court will waive the 14-day period of Rule 6004(h) and will authorize the payment of the 6% real estate commission and the 1% short sale negotiation fee.

7. 13-31219-A-7 DUSTIN SIEPERT
JRR-1

MOTION TO SELL
12-2-13 [13]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell as is and without warranties for $262,500 in cash a commercial real property in Loomis, California to Dianne Kniep (f.k.a. Dianne Lauwers). The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The debtor opposes the motion, contending that the reasonable value of the property is $750,000 and that the trustee is selling the property for less than a reasonable price.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The estate owns only a one-half undivided interest in the property, while the other one-half interest is owned by Ms. Kniep. Yet, by Ms. Kniep's agreement, the trustee is seeking to sell the entire property to Ms. Kniep and then for Ms. Kniep and the trustee to share equally in the net sales proceeds. Ms. Kniep has agreed to pay the title insurance and transfer fees/taxes costs. Escrow fees will be split evenly between the buyer and the seller. The first mortgage on the property of $140,000 held by Auburn National Bank will be paid from escrow. A judicial lien for $8,670.53, held by Kaiser Foundation Health Plan, Inc., will be paid through escrow but deducted from the estate's portion of the sales proceeds. Unpaid taxes in the amount of $35,558.69 will be paid from escrow. The buyer will not be assuming a leasehold estate held by Western Construction Supply Company, a dba of the debtor.

The trustee expects the estate to net approximately $33,437 from the sale of the property.

While the sale will generate some proceeds for distribution to creditors of the estate, the court does not have evidence from the trustee that he is selling the property for a reasonable price.

The court does not give any weight to the debtor's opposition because it is not supported by any evidence. See Local Bankruptcy Rule 9014-1(d)(6).

Nevertheless, the trustee has the burden of persuasion to show that the property is being sold for a reasonable price - part of his burden of persuasion to establish that the sale is in the best interest of the estate. See, e.g., In re Scimeca Foundation, Inc., 497 B.R. 753, 780 (Bankr. E.D. Pa. 2013) (noting that "when property is inadequately marketed the trustee will be unable to meet his burden to demonstrate that the proposed sale price is reasonable"). The motion does not say whether and to what extent the trustee has marketed the property and, if he has not marketed the property, why the property has not been marketed. The court will not speculate about what is reasonable value for the property, especially given that the property is listed in the debtor's Schedule B as having a market value of $508,920. The motion will be denied.

One final point, the court has been unable to find an explanation of why the payment of the judicial lien held by Kaiser will be deducted from the estate's portion of the sale proceeds.

8. 12-38128-A-7 JANET/FRANCISCO CUBOL — MOTION TO COMPEL ABANDONMENT
RLC-1 — 11-27-13 [105]

Tentative Ruling: The motion will be denied without prejudice.

The debtors seek to compel the trustee to abandon the estate's interest in their dental practice, including inventory, equipment, fixtures, account receivables, and a patient list.

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 motion says that all "assets are encumbered by a lien in favor of CIT Small business [*sic*] Lending Corporation" and a secured claim for $18,650.35 in favor of the IRS. The debtors urge the court to order the abandonment of the business because while dental practices "are sometimes sold, it is always with an agreement not to compete." Docket 105 at 2.

The motion will be denied because it does not identify the value of the inventory, equipment, fixtures and account receivables of the dental practice and does not identify the aggregate encumbrances against those assets. The motion mentions a lien held by CIT, but it does not say what the amount of that lien or why the inventory, equipment, fixtures and account receivables are burdensome or of inconsequential value to the estate.

Finally, the trustee's non-opposition to the motion does not satisfy the requirement under 11 U.S.C. § 554(b) that this court determine whether the property to be abandoned is burdensome or of inconsequential value to the estate. The motion will be denied.

9. 13-31835-A-7 CHARLES KINGSLEY — MOTION TO AVOID JUDICIAL LIEN
NBC-2 — 11-21-13 [34]
VS. DONALD FELTSEN

Tentative Ruling: The motion will be dismissed without prejudice because the court does not have the assignment of the subject judgment and it cannot ascertain whether Donald Feltsen is the judgment creditor it is Civil Judgment Recovery Agency, with Mr. Feltsen acting on it behalf.

The judgment in question was initially obtained by Kenneth Prag, who apparently then assigned the judgment. The abstract of judgment lists both Mr. Feltsen and Civil Judgment Recovery Agency. Docket 37. Even more confusing is the fact that Mr. Feltsen is not always associated with the Civil Judgment Recovery Agency. He appears to be doing business also under a different name, Gold Key. See http://www.cajp.org/member_search.php?county=SACR.

As a result, the court cannot be certain whether the judgment creditor was served at the correct address. The motion papers were served at "PO BOX 690578 STOCKTON, CA 95269," but this address is associated only with Mr. Feltsen and is not associated with the Civil Judgment Recovery Agency. See http://www.cajp.org/member_search.php?county=SACR.

Finally, the motion papers were not served on the judgment creditor at the address listed on the abstract of judgment, 1757 Yuba Street Redding, CA 96001.

This is perplexing as that address is on the very document that creates the lien.

Without having the assignment and without service of the motion papers on the judgment creditor at the address listed on the abstract of judgment, the court is not persuaded that the motion has been served properly. The motion will be dismissed without prejudice.

10. 13-33036-A-7 JENNIFER TAYLOR — MOTION FOR
CJO-1 — RELIEF FROM AUTOMATIC STAY
EVERBANK VS. — 12-20-13 [12]

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, Everbank, seeks relief from the automatic stay as to real property in Baraboo, Wisconsin. The property has a value of $124,472 and it is encumbered by claims totaling approximately $130,082. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

11. 13-34936-A-7 KEEFE GASPAR AND CYNTHIA MOTION TO
ALF-1 YBARRA-GASPAR COMPEL ABANDONMENT
12-20-13 [12]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their hair salon business, C&C Hair Studio.

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 hairstyling tools and equipment (including brushes, combs, clippers, hair dryer, chairs) with a value of $2,000 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

12. 11-33847-A-7 HI TEC AUTOMOTIVE MOTION TO
JRR-1 COMPROMISE CONTROVERSY
12-2-13 [38]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and Drew and Jill Pefferle, resolving an avoidance claim pertaining to the transfer of two promissory notes - the Bailey note and the Houseman note - from the debtor to the Pefferles pre-petition. The Pefferles have been collecting the payments on the notes from the obligors since the notes were transferred by the debtor to them in November 2010. This case was filed on June 2, 2011.

Under the terms of the compromise, the Pefferles will assign the notes to the trustee, who will collect the note balance, totaling $29,532.00 on the Bailey note and $29,567.00 on the Houseman note. The trustee has ascertained that the obligors are solvent and that the notes have high probability to be paid in full.

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).

While the court may be inclined to approve the compromise, the motion does not say how much the Pefferles have collected on account of the notes since this case was filed on June 2, 2011. The motion is not disclosing how much the trustee is giving up in not seeking the recovery of the sums collected by the Pefferles during the pendency of this case. This is especially important if the notes have been paid down substantially since this case was filed.

13. 02-22348-A-7 DNL-25 — BLACK MARKET RECORDS, INC. — MOTION TO VACATE 12-10-13 [331]

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

Cedric Singleton asks the court to set aside its April 26, 2013 order (DNL-25) permitting the trustee to assign the debtor's rap music albums to Cedric Singleton, Kevin Mann, and Arthur Battle, in accordance with a settlement agreement among those parties and the estate. Dockets 307, 310. Cedric Singleton contends that he was not served with the motion that resulted in the April 26 order and that the assignments the trustee is seeking to consummate are not in accordance with the terms of the settlement agreement previously approved by this court.

The trustee has filed a response, contending that the assignments she is seeking to consummate are consistent with the terms of the compromise.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

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

This motion should have been served on all creditors of the estate, as was the motion for authority to execute the assignments. This motion was not served on all creditors. Accordingly, the court will continue the hearing on the motion to allow the movant to serve the motion papers on all creditors of the estate.

As to the merits of this motion, the court has reviewed the proof of service for the motion for authority to execute assignments and has confirmed that the movant was not served with the motion papers. While one of the movant's attorneys, George Hollister, was served with the motion papers, Mr. Hollister was not counsel for the movant in this bankruptcy case.

As the movant was not served with the motion for authority to execute assignments and the movant is disputing that the assignments are consistent with the terms of the settlement agreement among the parties, the court is inclined to conditionally set aside its April 26, 2013 order permitting the trustee to execute the assignments "in accordance with the terms of the agreement." Docket 307.

The condition for the setting aside of the April 26 order is that the movant file an adversary proceeding within 30 days of entry of the order on this motion. The court will not resolve the respective parties' interests in the albums per the terms of the settlement agreement, absent an adversary proceeding. See Fed. R. Bankr. P. 7001(2). The court will require the movant to file the adversary proceeding to seek a determination of the parties' respective interests in the albums.

When the court granted to the trustee authority to make the assignments, the court did not determine whether the proposed assignments were consistent with the terms of the settlement agreement. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(2). The court merely stated that it "will authorize the estate to make the assignments in accordance with the terms of the agreement." Docket 307.

14. 13-28248-A-7 GLENN BARNEY — MOTION TO VACATE
TMP-1 — 12-7-13 [119]

Tentative Ruling: The motion will be denied.

The debtor asks the court for relief from its August 21, 2013 civil minute order (Docket 69) dismissing the debtor's August 5, 2013 motion to dismiss the then chapter 11 case. The debtor argues that the court was wrong to dismiss the dismissal motion for violating Fed. R. Bankr. P. 2002(a)(4) in not giving at least 21 days' notice of the hearing, because the court's order scheduling deadlines (Docket 5) allowed for a motion to dismiss to be filed and served at least seven calendar days prior to the preliminary status conference. Dockets 5, 66, 69. The dismissal motion was filed on August 5, 2013 (Docket 57) and set for a hearing on August 19, 2013, the date of the debtor's chapter 11 continued preliminary status conference hearing.

This case was converted to chapter 7 on December 3, 2013 pursuant to a motion filed by the United States Trustee. Dockets 111, 112.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

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

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

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

This motion will be denied for seven reasons.

First, the proof of service for this motion is deficient in that it is unsigned and incomplete. Only the first page of the proof of service for the motion is in the court's file. Docket 123. The proof of service does not even identify the name of the person who served the motion papers.

Second, this motion does not address whether it is being brought within reasonable time. The court dismissed the August 5 dismissal motion without prejudice on August 21. Docket 66. The debtor filed another dismissal motion on August 18 that was set for hearing on September 16, 2013. Dockets 61, 62, 90. The August 18 dismissal motion was denied because there was no evidence with it. Dockets 90, 92.

This motion does not explain why it is being brought nearly four months after the order dismissing the August 5 dismissal motion, when the court ruled on another dismissal motion during those four months. Why did it take four months for the debtor to ask the court to reconsider its order on the dismissal of a motion that was brought and adjudicated once again during those four months? How is this reasonable and how is this reasonable time?

Third, another reason for denying this motion is that the dismissal of the August 5 motion was without prejudice. Docket 66. As pointed out above, the court adjudicated another dismissal motion brought by the debtor, after dismissing the August 5 motion.

Fourth, while the order scheduling deadlines allowed the debtor to file and serve a motion to dismiss at least seven days before the chapter 11 preliminary status conference hearing, the dismissal motion filed by the debtor on August 5 and set for hearing on August 19 was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(2) and not pursuant to this court's order scheduling deadlines. The notice of hearing for the August 5 dismissal motion specifically states that "this motion is being set for hearing under Local Bankruptcy Rule 9014-1(f)(2)." Docket 58 at 2. Thus, even though the August 5 dismissal motion could have been noticed pursuant to the order scheduling deadlines, it was not noticed pursuant to that order.

Fifth, the debtor appeared at the August 19 preliminary status conference hearing with counsel. Docket 65. The debtor did not request dismissal and did not say anything about the August 5 dismissal motion or about his entitlement to have that motion heard on August 19. If he had, the court would have taken the merits of the August 5 dismissal motion. Instead, the court proceeded with the issuance of a status conference order that set deadlines for the filing of a plan and disclosure statement. Docket 71.

Sixth, even in the absence of the above deficiencies, the court cannot reconsider the dismissal of the August 5 dismissal motion because the debtor has not established that he is entitled to dismissal pursuant to the August 5 dismissal motion. Even if the court were to take up the merits of the August 5 motion, the motion would have to be denied because - just like the August 18 dismissal motion - it is devoid of evidence in violation of Local Bankruptcy

Rule 9014-1(d)(6). See Docket 90.

Finally, the court will not reconsider its dismissal of the August 5 motion because the case has been converted to chapter 7 since that dismissal and the standard for dismissing chapter 11 cases is no longer relevant. On the other hand, the instant motion makes no effort to say why dismissal of the now chapter 7 case is warranted.

Stated differently, the debtor must show not only why the court should set aside the order dismissing the August 5 dismissal motion, but must show also why he should prevail on the merits of that dismissal motion. The debtor has not done this. This motion will be denied.

15. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR CONTEMPT, SANCTIONS AND EXPUNGMENT OF LIEN
DJH-12 — 11-18-13 [231]

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from December 3 in order for the parties to address specific issues identified by the court at the December 3 hearing. The parties have filed supplemental papers and the court's amended ruling on the motion follows below.

The debtors are asking for sanctions against Charter Adjustment Corporation and Donald Sternberg for violation of the discharge injunction. Mr. Cesar complains that the respondents violated the discharge injunction because they have refused to remove a judgment lien against real property the debtors no longer own. Mr. Cesar complains that he applied for credit with Macy's but was denied because of the judgment lien on record.

CAC filed a state court complaint for money damages against debtor Joseph Cesar on October 6, 2008. Apparently, the suit was based on debt assigned from CIT Group/Commercial Services, Inc. to CAC. CAC obtained a default judgment for $6,970.47 against Mr. Cesar on November 6, 2009. On March 2, 2010, a notice of a trustee's sale as to the property in Carmichael, California was recorded. On or about March 8, 2010, CAC recorded an abstract of judgment, creating a judgment lien against the debtors' real property in Carmichael, California. On April 16, 2010, the real property was sold at foreclosure. On July 19, 2010, the debtors filed the instant chapter 7 bankruptcy case. The debtors' chapter 7 discharge was entered on November 16, 2010 and the trustee issued a report of no distribution on January 31, 2012. The case was closed on March 9, 2012. The trustee issued another report of no distribution on April 18, 2012, while the case was still closed.

Sometime in November 2012, Mr. Cesar applied for credit with Macy's. On November 30, 2012, Macy's rejected his credit application. Docket 234 Ex. 2.

The court reopened the case on August 30, 2013, pursuant to a request by the debtors. Docket 105. This motion was filed on August 26, 2013. The debtors complain that they requested CAC to remove the judgment lien they recorded pre-petition from the public record, but CAC has refused to remove it.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385

B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

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

The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the sanctions are justified. Namely, the party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

The court may award punitive damages for willful violation of 11 U.S.C. § 524. Nash v. Clark County District Attorney's Office (In re Nash), 464 B.R. 874, (B.A.P. 9th Cir. 2012) (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008)). A punitive damage award requires the trial court to make sufficient findings to warrant punitive damages. Rosales v. Wallace (In re Wallace), Case No. NV-11-1681-KiPaD, 2012 WL 2401871, at *7-8 (B.A.P. 9th Cir., June 26, 2012); Fed. R. Civ. P. 52(a) & Fed. R. Bankr. P. 7052.

For a lien to exist, both the property to which the lien attaches and the obligation that it secures must exist at same time. Wirum v. Great American Life Ins. Co. (In re Thompson), Case No. NC-06-1254-BSKu, 2007 WL 7541012, at *2 (B.A.P. 9th Cir. Mar. 30, 2007) (citing In re Baker, 217 B.R. 609, 613 (Bankr. N.D. Cal. 1998)).

A chapter 7 discharge extinguishes "in personam" liability on debt, but the discharge does not extinguish "in rem" liability. Such liability remains, but only to the extent the debtors continue to own interest in the pre-petition property that was subject to the pre-petition judgment lien on the petition date.

The debtors' personal liability on the debt giving rise to the judgment lien was extinguished when they received their chapter 7 discharge on November 16, 2010. CAC's lien on the property was extinguished when the property was foreclosed pre-petition. If the property had not been lost to foreclosure by the debtors pre-petition, the pre-petition lien on the property would have survived the bankruptcy.

The judgment lien was created pre-petition, on or about March 8, 2010. The property was also foreclosed pre-petition, on April 16, 2010. The bankruptcy case was not filed until July 19, 2010. This means that when the debtors received their bankruptcy discharge, on November 16, 2010, their in personam liability to CAC was extinguished. CAC's judgment lien on the property was

extinguished at the April 16, 2010 foreclosure because the foreclosure sale was for the benefit of a senior in priority mortgage holder on the property. As the debtors no longer own the property subject to the judgment lien and the debt giving rise to the lien has been discharged, there is no longer in rem liability to CAC either.

The judgment lien is no longer valid because the underlying liability for the lien has been discharged. Stated differently, the lien can no longer attach to real property obtained after the debtors' bankruptcy discharge because the judgment lien is valid only so long as the judgment upon which it is based is valid.

For a lien to exist, both the property to which the lien attaches and the obligation that it secures must exist at same time. Wirum v. Great American Life Ins. Co. (In re Thompson), Case No. NC-06-1254-BSKu, 2007 WL 7541012, at *2 (B.A.P. 9th Cir. Mar. 30, 2007) (citing In re Baker, 217 B.R. 609, 613 (Bankr. N.D. Cal. 1998)). As the obligation being secured by the judgment lien has been discharged, the lien no longer exists.

The debtor has established that CAC continued to demand that its judgment lien be paid.

However, CAC has shown that its continued demand for payment was based on the mistaken belief that the debtors still owned the real property and were seeking the removal of CAC's lien from that property. Neither the debtors nor their counsel told CAC that the property had been lost by the debtors before the filing of the bankruptcy petition. CAC claims and the court accepts that CAC was merely negotiating the in rem liability represented by the lien, without knowledge that there was no longer such liability because the property had been lost in a foreclosure. The court is persuaded that CAC was not attempting to collect on the in personam liability represented by the lien. Given this, the court will deny this motion.

16. 13-35566-A-7 PAULA PHELPS — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 12-19-13 [10]
AMERICAN HONDA FINANCE CORP. VS.

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

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2009 Honda Accord. The vehicle has been surrendered to the movant. The movant has produced evidence that the vehicle has a value of $9,475 and its secured claim is approximately $15,772.

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, the debtor has surrendered the vehicle to the movant. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

17. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION TO COMPEL ABANDONMENT 12-30-13 [33]
MHK-5

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in:

- real property in Roseville, California (valued at $340,000 and subject to $2,024,691 in claims, including over $1.9 million in judicial liens and a single mortgage in the amount of $82,027),
- Golden 1 Credit Union account (128-9) (value of $10.30),
- Golden 1 Credit Union account (128-0) (value of $1.00),
- Patelco Credit Union account (750-00) (value of $1.00),
- Patelco Credit Union account (750-80) (value of $103.02),
- Patelco Credit Union account (50-10) (value of $10.99),
- china hutch (value of $800),
- dining table (value of $800),
- household goods and furnishings (value of $10,000),
- sofa (value of $700),
- men's and women's clothing (value of $2,000),
- earrings (value of $1,500),
- necklaces, bracelets, earrings, and miscellaneous costume jewelry (value of $1,500),

- Canada Life insurance policy (value of $1,192.90),
- Mony Life insurance policy (value of $0.00),
- Sun Life Financial insurance policy (value of $0.00),
- Preferred Trust account (value of $15,774.31),
- D&M Investments (value of $0.00), and
- leased 2013 Honda Accord vehicle (3-year lease entered into on August 8, 2013).

The debtors have claimed a $175,000 exemption in their real property and have exempted in full all other assets, except for the credit union accounts, the Mony Life insurance policy (value of $0.00), the Sun Life Financial insurance policy (value of $0.00), and their interest in D&M Investments (value of $0.00). The credit union accounts are of inconsequential value to the estate (approximate value of $126). The lease of the 2013 Honda Accord vehicle is also of inconsequential value and burdensome to the estate because the required monthly lease payments are $303.49. Given the encumbrances against the real property, given the exemption claims, and given the nominal value of the nonexempt assets, the court will order the abandonment of the assets listed in this ruling. The motion will be granted.

18. 13-33187-A-7 CARLOS/CLARA ALVAREZ — MOTION TO DISMISS CLARA MONICA ALVAREZ 12-16-13 [14]
DAA-1

Tentative Ruling: The motion will be granted and the case will be dismissed as to the co-debtor Clara Alvarez.

The debtors are asking that the case be dismissed as to the co-debtor Clara Alvarez.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

The debtors went to Colombia after filing the petition on October 10, 2013 and only the debtor, Carlos Alvarez, came back, while Mrs. Alvarez stayed behind in Colombia for medical treatment. She has a serious illness and desires to continue with medical treatment in Colombia. Given this, the motion will be granted and the case will be dismissed as to Clara Alvarez only.

19. 13-35295-A-7 KEVIN MCCALEB — ORDER TO APPEAR AND SHOW CAUSE 12-12-13 [15]

Tentative Ruling: The order to show cause will be discharged and the court will not order the appointment of a patient care ombudsman.

This order to show cause was issued for the court to determine whether the appointment of a patient care ombudsman under 11 U.S.C. § 333(a) is necessary, given the debtor's designation in the petition that he runs a health care business. The debtor has responded to this order, arguing that the appointment of a patient care ombudsman is unnecessary.

11 U.S.C. § 333(a)(1) provides that:

"If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care

and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case."

The term "health care business" means "any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for— (i) the diagnosis or treatment of injury, deformity, or disease; and (ii) surgical, drug treatment, psychiatric, or obstetric care." 11 U.S.C. § 101(27A).

The debtor is a chiropractor whose medical practice is in Mexico. Thus, even if the court were to appoint a patient care ombudsman, such ombudsman would be unable to monitor the quality of patient care and to represent the interests of the debtor's patients. The court cannot envision that an ombudsman appointed in the United States would have ability and authority to monitor patients in Mexico.

More, 11 U.S.C. § 333(a)(1) is a statute enacted by the United States Congress to safeguard the public in the United States and not in Mexico. This court will not order the appointment of a patient care ombudsman under 11 U.S.C. § 333(a)(1) to monitor and represent patients that are Mexican nationals, in Mexico. The order to show cause will be discharged and the court will not order the appointment of a patient care ombudsman.

THE FINAL RULINGS BEGIN HERE

20. 13-33203-A-7 JERRY/KARYN PEELER — MOTION FOR RELIEF FROM AUTOMATIC STAY
RLL-1 — 11-27-13 [12]
SETERUS, 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 granted.

The movant, Seterus, Inc., seeks relief from the automatic stay as to real property in Vacaville, California. The property has a value of $219,099 and it is encumbered by claims totaling approximately $228,289. The movant's deed is in first priority position and secures a claim of approximately $216,793.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 11, 2013.

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

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

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

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

the motion.

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

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

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

21. 10-47509-A-7 ELIZABETH MARTIN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $1,592.50, EXP. $86.94) 12-2-13 [82]
SMD-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 creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,592.50 in fees and $86.94 in expenses, for a total of $1,679.44. This motion covers the period from October 21, 2013 through December 2, 2013. The court approved the movant's employment as the estate's accountant on October 22, 2013. In performing its services, the movant charged an hourly rate of $325.

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

The court concludes that the compensation is for actual and necessary services

rendered in the administration of this estate. The compensation will be approved.

22. 12-28413-A-7 F. RODGERS CORPORATION
SAR-1
MISSION TOWNHOUSES, LLC VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-13-13 [558]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service, the motion was not served on the debtor.

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 debtor's attorney to the exclusion of the debtor. Contra Fed. R. Bankr. P. 7004(g). Accordingly, service is defective.

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

23. 13-33113-A-7 OLGA GOYA
PD-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-12-13 [13]

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, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Tehama, California. The property has a value of $80,000 and it is encumbered by claims totaling approximately $85,279. The movant's deed is in second priority position and secures a claim of approximately $60,325.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 13, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

24. 12-41025-A-7 PATRICK MULLIN — MOTION FOR APPROVAL OF STIPULATION FOR AUTHORIZATION TO SELL CO-OWNER'S INTEREST IN REAL PROPERTY
CWC-6 — 12-16-13 [48]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and George Mullin, resolving the marketing and sale of real property owned one-half by the estate and one-half by Mr. Mullin. The trustee desires to sell the estate's one-half interest in the property.

Under the terms of the compromise, Mr. Mullin has agreed for the estate to market and sell the entire property, without the necessity for the trustee to prosecute an adversary proceeding. Fed. R. Bankr. P. 7001(3). The trustee has already retained a real estate broker. Any sale would be subject to further court approval.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d

610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the estate will not have the expense of prosecuting an adversary proceeding in order to sell its one-half interest in the property, given that the sale of the entire property is likely to generate more for the estate than if the estate were to sell its one-half interest only, and given the inherent risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

25. 13-33727-A-7 CARINA FERRER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 12-4-13 [12]
WELLS FARGO BANK, N.A. VS.

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Vallejo, California. The property has a value of $313,000 and it is encumbered by claims totaling approximately $492,048. The movant's deed is in first priority position and secures a claim of approximately $122,848.

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

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

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

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this

motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

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

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

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

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

26. 13-20934-A-7 SARA FLETCHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
WELLS FARGO BANK, N.A. VS. — 12-2-13 [37]

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Roseberg, Oregon.

Given the entry of the debtor's discharge on May 13, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $122,000 and it is encumbered by claims totaling approximately $161,316. The movant's deed is the only encumbrance against the property.

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

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

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

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

27. 13-23434-A-7 JERMAINE FORD — MOTION TO AVOID JUDICIAL LIEN
EJS-2
VS. PATELCO CREDIT UNION ET AL., — 11-26-13 [52]

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 creditors 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 Patelco Credit Union for the sum of $11,335.26 on November 8, 2010. The abstract of judgment was recorded with Sacramento County on March 14, 2011. That lien attached to the debtor's residential real property in Sacramento, California.

A judgment was entered against the debtor in favor of Solano First Federal Credit Union for the sum of $14,398.62 on April 23, 2008. The abstract of judgment was recorded with Sacramento County on July 26, 2010. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of

$325,000 as of the date of the petition. The unavoidable liens total $503,064 on that same date, consisting of a single mortgage for $486,064 in favor of Carrington Mortgage and a mechanics lien for $17,000 in favor of Service Master Restoration. 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 respondents hold judicial liens created by the recordation of abstracts 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 liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

28. 13-33744-A-7 GERASSIMOS VERTEOURI — MOTION TO CONVERT CASE TO CHAPTER 13
CAH-2 — 12-30-13 [19]

Final Ruling: The motion will be dismissed without prejudice.

This motion was set for hearing on 14 days of notice. Fed. R. Bankr. P. 2002(a)(4) requires a minimum of 21 days' notice of the hearings on motions to convert in chapter 7 cases. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(4) requires a minimum of 21 days of notice of the hearing and because only 14 days' was given, notice is insufficient.

29. 12-33055-A-7 SANDRA CASTANON — MOTION TO ABANDON
12-2568 DM-3 — 12-10-13 [33]
MCBRIDE ET AL. V. CASTANON

Final Ruling: The motion will be dismissed without prejudice.

This motion was erroneously filed in an adversary proceeding. The court does not order the abandonment of property in adversary proceedings. The should be filed and heard in the main case. Also, this calendar is only for matters brought in main bankruptcy cases. The court does not hear matters in adversary proceedings on this calendar.

Finally, even if the court to reach the merits of the motion, the motion would be denied. It is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. See Local Bankruptcy Rule 9014-1(d)(6).

30. 12-33565-A-7 MARK KOLODZIEJ — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $747.50)
GMR-2 — 12-2-13 [50]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further,

because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $747.50 in fees and $0.00 in expenses. This motion covers the period from November 16, 2013 through November 27, 2013. The court approved the movant's employment as the estate's accountant on November 18, 2013. In performing its services, the movant charged an hourly rate of $325.

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

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

31. 13-23579-A-7 ROSS FARROW
SMD-2

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $1,722.50, EXP. $82.48) 12-9-13 [46]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,722.50 in fees and $82.48 in expenses, for a total of $1,804.98. This motion covers the period from July 23, 2013 through December 9, 2013. The court approved the movant's employment as the estate's accountant on July 24, 2013. In performing its services, the movant charged an hourly rate of $325.

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

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

approved.

32. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION TO AVOID JUDICIAL LIEN
MHK-1
VS. BOB LYNCH FAMILY HOLDINGS, INC. — 12-30-13 [24]

Final Ruling: The motion will be denied without prejudice because:

(1) Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Bob Lynch Family Holdings, Inc., without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 29.

(2) The exhibits to the motion have not been authenticated by a declaration. Docket 26. There is only a verification of the motion that does not mention the exhibits.

(3) The abstract of judgment attached to the motion reflects a recording in Santa Clara County, not Placer County, where the debtors' real property is located. Docket 26, Ex. E at 7. Without the abstract of judgment recorded in Placer County, the court cannot determine the relative priority of the subject lien to the other avoidable liens. This is especially important here because there is equity in the property (valued at $340,000) after the deduction of the unavoidable liens (mortgage of $82,027.27 and unpaid property taxes for $1,107.09) and the debtors' exemption claim ($175,000).

(4) The court does not have evidence from the debtors that they are entitled to the claimed $175,000 exemption in the subject property. Just because the time for objecting to the exemption has expired does not mean that the debtors are necessarily entitled to the exemption for purposes of this motion.

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (40 the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). A creditor who has not timely objected to a claim of exemption may nevertheless challenge the validity of the exemption when defending a lien avoidance motion under section 522(f). Morgan at 152.

Given the foregoing deficiencies and the presence of the same or similar deficiencies in the remaining lien avoidance motions, the court will deny without prejudice the remaining lien avoidance motions (DCNs MHK-2, MHK-3, MHK-4).

The court suggests that the debtors refile all lien avoidance motions in light

of this ruling and taking into consideration the notice requirements of Fed. R. Bankr. P. 7004.

33. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION TO AVOID LIEN
MHK-2
VS. HOPKINS & CARLEY — 12-30-13 [27]

Final Ruling: The motion will be denied without prejudice in accordance with the ruling on the related lien avoidance motion, MHK-1.

34. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION TO AVOID LIEN
MHK-3
VS. GMAC — 12-30-13 [20]

Final Ruling: The motion will be denied without prejudice in accordance with the ruling on the related lien avoidance motion, MHK-1.

35. 13-32984-A-7 DONALD/DENISE MALINOFF — MOTION TO AVOID LIEN
MHK-4
VS. FREEMONT BANK — 12-30-13 [16]

Final Ruling: The motion will be denied without prejudice in accordance with the ruling on the related lien avoidance motion, MHK-1.

36. 13-31589-A-7 FINLAY/SHAWN TORRANCE — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
WELLS FARGO BANK, N.A. VS. — 12-2-13 [16]

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

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

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

Given the entry of the debtor's discharge on December 11, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $460,000 and it is encumbered by claims totaling approximately $474,126. The movant's deed is in first priority position and secures a claim of approximately $421,940.

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

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

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

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

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

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

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

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