UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 10, 2014 at 10:00 a.m.

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

2, 10, 13, 15, 17

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 MARCH 10, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 24, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 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. 13-27117-A-7 DAVID/VICTORIA EHRHARDT — MOTION TO AVOID JUDICIAL LIEN
MTM-2
VS. GCFS, INC. — 1-2-14 [48]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against debtor David Ehrhardt in favor of GCFS, Inc. for the sum of $22,633.17 on October 12, 2012. The abstract of judgment was recorded with Amador County on November 27, 2012. That lien attached to the debtor's residential real property in Jackson, California.

The debtor is asking the court to avoid the subject judicial lien on the basis that the lien impairs the debtor's exemption in the property.

However, the debtor has claimed an exemption of $0.00 in the property. Claiming an exemption of $0.00 is tantamount to claiming no exemption because a judicial lien cannot reduce an exemption value of $0.00. See e.g., In re Berryhill, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000). The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Claiming an exemption of $0.00 reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied.

2. 13-33618-A-7 CAROLE BAIRD — MOTION TO COMPEL ABANDONMENT
LBG-1 — 1-27-14 [69]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Sacramento, California. The property is over-encumbered.

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

The debtor has scheduled the value of the property at $600,000. The property is encumbered by outstanding property taxes in the amount of $90,000 and a claim held by Scott and Elizabeth Aghbashian in the amount of $1.1 million.

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

3. 13-31219-A-7 DUSTIN SIEPERT — MOTION TO SELL
JRR-1 — 12-2-13 [13]

Tentative Ruling: The motion will be denied.

The court continued the hearing on this motion from January 13, 2014 to allow the trustee to file additional papers in support of the motion. As the trustee has filed additional papers, an amended ruling follows below.

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 now has evidence that the trustee is not selling the property for a reasonable price. The trustee has produced evidence indicating that the property has a value of $400,000 or more. Docket 24. The trustee has submitted a detailed broker's price opinion indicating a low value of $400,000. This is $137,500 more than the proposed sales price of $262,500. The BPO suggests that the value of the property may be even as much as $80 a square foot, translating into an aggregate value of $952,000 ($80/sq ft x 11,900 ft). The trustee's papers also contain a written valuation by a real estate broker placing the value somewhere between $350,000 and $400,000, at $35 a square foot. Docket 24.

Even after taking into account the property's deferred maintenance and necessity for "removal and clean up of the Debtor's abandoned liquid solvent and road base solvent tank from his business," the court does not have evidence

that the current condition of the property makes the property worth less than BPO's conservative $400,000 valuation. Docket 15 ¶ 5.

Actually, the BPO submitted by the trustee states that "[c]onsidering the condition the property is in, the price should be further reduced to consider expected rehab budget[;] [a] revised price point should be in the neighborhood of $45-$60 per foot," making the property worth somewhere between $535,500 and $714,000. Docket 24 at 44.

Given this, the court is not persuaded that the proposed purchase price of $262,500 is reasonable. The sale is not in the best interest of the estate as the trustee has not even marketed the property. The motion will be denied.

4. 10-46027-A-7 MAUREEN NJAMFA — MOTION TO AVOID COLLECTION EFFORTS 1-21-14 [67]

Tentative Ruling: The motion will be dismissed without prejudice.

First, the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice 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.

Second, the respondent creditor has not been served in accordance with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon 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 Highlands Management Corporation 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."

Also, the service on Highlands Management Corporation is in the care of Oliver Management Network, Inc. The court is not clear why Highlands was served in the care of Oliver.

Additionally, the proof of service states that Highlands "[h]ired" a collection agency named Community Assessment Recovery Services or CARS. The court cannot tell whether Highlands merely hired CARS or assigned the debt to CARS. As of November 18, 2013, Highlands was listed as a customer of CARS, but there is no evidence of who owns the debt at this time.

In the event the debt was assigned to CARS, the motion will be dismissed because CARS has not been served properly with the motion. The service on CARS has not been addressed "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."

Third, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating

that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Fourth, the motion does not contain a unique docket control number. See Local Bankruptcy Rule 9014-1(c). This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

Finally, the debtor filed this case on September 30, 2010 and received her discharge on January 25, 2011. The debtor complains that CARS has been attempting to collect on HOA dues.

However, the motion does not identify with precision the relief sought and there is no evidence with the motion that the collection efforts are against the debtor personally. The debtor appears to be the owner, and is in possession of, the property encumbered by the HOA dues. As of November 18, 2013, the debtor is listed as the owner-trustor of the condominium on Tally Ho Drive #136, on which the HOA dues were assessed. This is important because the person to whom the HOA dues are due lien is not barred from enforcing the lien against the property encumbered by the lien. See 11 U.S.C. § 524(a). The holder of the claim for HOA dues that were due before the bankruptcy is precluded only from enforcing them as a personal liability against the debtor. As to any HOA dues falling due after the filing of the case, the debtor remains personally liable for those dues by virtue of 11 U.S.C. § 523(a)(16). It is unclear from the motion when the dues in question fell due and what action is being taken to collect the dues – are they being enforced solely against the property or personally against the debtor?

Thus, even if the motion were without the foregoing procedural deficiencies, there is insufficient information and evidence with the motion for the court to adjudicate it.

5. 13-30835-A-7 RICK HENDRICKS — MOTION TO WITHDRAW AS ATTORNEY
RLG-1 — 1-22-14 [35]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by counsel for the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor and any other party 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.

Attorney Kaushik Ranchod asks for permission to withdraw as counsel for the debtor because of "a breakdown in communication."

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client

and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client
(a) insists upon presenting a claim or defense that is not warranted under

existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The debtor failed to inform the movant of the November 16, 2013 passing away of his mother, who was a settlor and the trustee of a family trust in which the debtor purportedly has a 25% interest. The movant found out about the passing away of the debtor's mother on December 18, 2013 from the trustee, who has been attempting to obtain information about the trust and about trust distributions to the debtor made after the passing of his mother. The movant had informed the debtor of his rights and duties regarding the trust, in the event his trust interest vested within the time during which the trustee may seek to recover such interest. Docket 37.

This case was filed on August 16, 2013 and the debtor received his chapter 7 discharge on December 2, 2013.

The above-described breakdown in communication between the debtor and the movant is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The debtor's lack of cooperation in apprising the movant about issues that are important to the outcome of the case and the administration of the estate has made it difficult for the movant to represent the debtor in this case. Accordingly, the court will permit the movant's withdrawal from this case. The motion will be granted.

6. 13-31835-A-7 CHARLES KINGSLEY — MOTION TO AVOID JUDICIAL LIEN
NBC-2
VS. DONALD D. FELTSEN — 11-21-13 [34]

Tentative Ruling: The motion will be dismissed without prejudice.

The hearing on the motion was continued from January 13, 2014 in order for the movant to correct service issues. The movant filed another proof of service

for the motion on January 13, 2014. An amended ruling for the motion follows below.

The motion will be dismissed because the debtor has not corrected yet one of the deficiencies identified in the ruling posted for the January 13, 2014 hearing on the motion. Specifically, "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."

7. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-1
VS. FIA CARD SERVICES, N.A. — 1-10-14 [17]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of FIA Card Services, NA for the sum of $22,073.10 on November 10, 2011. The abstract of judgment was recorded with Solano County on January 24, 2012. That lien attached to the debtor's residential real property in Vallejo, California. The debtor is asking the court to avoid the subject lien.

The motion will be denied without prejudice because the debtor's reference to the entry of the judgment, the abstract of judgment and the recordation of the abstract is inadmissible hearsay. These documents are not part of the record. The debtor simply refers to them in the supporting declaration to this motion. Fed. R. Evid. 802; Docket 19 at 2.

8. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-2
VS. AMERICAN EXPRESS CENTURION BANK — 1-10-14 [21]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of American Express Centurion Bank for the sum of $18,600 on May 5, 2011. The abstract of judgment was recorded with Solano County on June 3, 2011. That lien attached to the debtor's residential real property in Vallejo, California. The debtor is asking the court to avoid the subject lien.

The motion will be denied without prejudice because the debtor's reference to the entry of the judgment, the abstract of judgment and the recordation of the abstract is inadmissible hearsay. These documents are not part of the record. The debtor simply refers to them in the supporting declaration to this motion. Fed. R. Evid. 802; Docket 23 at 2.

9. 13-34340-A-7 DWIGHT REED — MOTION TO AVOID JUDICIAL LIEN
MMP-3
VS. CITIBANK, N.A. — 1-10-14 [25]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of $22,146.67 on November 3, 2011. The abstract of judgment was recorded with Solano County on December 20, 2011. That lien attached to the debtor's residential real property in Vallejo, California. The debtor is asking the court to avoid the subject lien.

The motion will be denied without prejudice because the debtor's reference to the entry of the judgment, the abstract of judgment and the recordation of the abstract is inadmissible hearsay. These documents are not part of the record. The debtor simply refers to them in the supporting declaration to this motion. Fed. R. Evid. 802; Docket 27 at 2.

10. 13-29741-A-7 BETTY MIGUEL — MOTION TO ABANDON
HSM-2 — 1-21-14 [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 trustee wishes to abandon the estate's interest in a real property in Huntsville, Alabama. The property is a condominium.

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

According to the trustee, the property has an approximate value of $75,371, whereas its encumbrances total at least approximately $71,590, representing two mortgages in favor of Citimortgage. The court also notes that there is a pending stay relief motion by the first mortgagee on the property. Docket 24. Given the foregoing and taking into account the costs the estate would have to incur to administer the property, including the approximately 8% sale costs and the costs of obtaining court approval of the sale, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

11. 13-34342-A-7 DEREK/LAURA FITZGERALD — MOTION TO DISMISS CASE
UST-2 — 12-26-13 [20]

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

The U.S. Trustee moves for dismissal of this case pursuant to 11 U.S.C. § 707(b)(1) and (2), contending that the debtors took mortgage deductions on their means test form to which they are not entitled, given the pre-petition foreclosure of the home as to which the deductions were taken.

This case was filed on November 8, 2013. The debtors claimed to have in their means test form monthly disposable income of negative $1,013.02 (over 60 months it is $60,781.20) and claimed $3,394 in expenses on account of mortgages as to a real property in Placerville, California. However, the debtors did not own the property as of the petition date as it was foreclosed in 2012. And,

excluding the mortgage deductions, the debtors' 60-month disposable income on the means test form would have been "substantially in excess of $12,475."

The debtors have stipulated to dismissal of the case and to all the foregoing. In addition, as part of the stipulation with the debtors, their counsel has agreed to pay the debtors $4,366.

Given the foregoing, the court will dismiss the case under 11 U.S.C. § 707(b)(2) as there is presumption of abuse.

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

Tentative Ruling: The motion will be conditionally granted.

The hearing on this motion was continued from January 13. An amended ruling from January 13 follows below.

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).

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 will 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.

13. 12-33055-A-7 SANDRA CASTANON — MOTION TO COMPEL ABANDONMENT 1-19-14 [41]
DM-4

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Stockton, California. The property is over-encumbered.

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

The debtor has produced evidence that the property has a value of $410,000 (Docket 43), whereas the encumbrances against the property total $719,665, consisting of a mortgage held by Wells Fargo Home Mortgage in the amount of $513,498 and two mortgages held by Stockton Mortgage totaling $206,167.

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

14. 12-33467-A-7 RONALD DUNCAN
DNL-10

MOTION TO
APPROVE COMPROMISE
12-24-13 [226]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement among the estate, the debtor's sister Renee Duncan, and Karl Dolk in his capacity as a trustee of the Duncan Family Revocable Trust Dated January 27, 1997, resolving the estate's interest in the trust.

The debtor and Renee Duncan are seemingly equal co-beneficiaries of the trust, which was established by their now-deceased parents. Apparently, the trust property assets should have been distributed to the debtor and Renee Duncan already. The property still held in the trust includes:

- An industrial real property in Carmichael, California (with a value of $800,000 to the trust);

- An 84.718% co-tenant interest in an improved multi-family senior residential real property on Sutter Avenue in Carmichael, California (with a value of $1.7 million to the trust). The remaining interest in the property is owned directly by the debtor (7.641% interest) and Renee Duncan (7.641% interest);

- A 50% interest in a trust that owns two unimproved lots in Lake Samish, Washington (with a value of $5,000 to the trust);

- A 23% interest in a limited partnership entity that owns a 20-unit senior residential real property in Quincy, Washington (with a value of $50,000 to the trust); and

- Cash in the amount of $145,000.

In addition, the trust contains an outstanding specific bequest to the debtor of an unimproved lot in Siskiyou Meadows subdivision (with a value of $45,000 to the trust).

Renee Duncan claims that the debtor has received $195,000 more in trust asset distributions than she has received in distributions.

The settlement provides for distribution of the remaining trust assets. Under the terms of the settlement:

- The trustee of the family trust will distribute the Carmichael industrial property, the specific bequest lot, and the two Lake Samish lots to Renee Duncan;

- If the debtor joins in the settlement, the 20-unit Quincy real property will be distributed to the estate. In addition, the first $705,000 of the remaining assets will be distributed $655,000 to the estate and $50,000 to Renee Duncan, with the balance, if any, to be shared equally by the estate and Renee Duncan;

- If the debtor does not join in the settlement, the 20-unit Quincy real property will be distributed to Renee Duncan. In addition, the first $705,000 of the remaining assets will be distributed to the estate, with the balance, if any, to be shared equally by the estate and Renee Duncan;

- If the trust assets are not sufficient to make the agreed equalizing payment to the estate, when the real property on Sutter Avenue is liquidated and distributed Renee Duncan's separate direct 7.641% interest share in that property will be applied to make the equalizing payment to the estate.

The debtor oppose approval of the compromise, raising some substantial issues as to the division of the trust assets. The debtor questions the independent accounting of the trust assets conducted by Bowman & Associates at the request of the trustee of the trust. Specifically, the debtor raises the following questions:

- credit he has been given for a distribution in 2006 in the amount of $241,250,

- failure to take into account operating expenses for two real properties, one in Mount Shasta, California and another on Clark Avenue in Carmichael, California, and

- $226,000 in rents imputed to Carmichael Construction, a business apparently ran by the debtor, are overstated by $151,514.

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 motion will be denied without prejudice. Initially, the debtor has not alleged his standing to oppose approval of the settlement.

Nevertheless, the court is satisfied that the debtor has standing to oppose the approval of the settlement. The debtor has scheduled his interest in the trust, valuing it at $500,000. But, the debtor has claimed no exemption in his interest in the trust.

However, the unsecured proofs of claim filed against the estate total approximately $4.9 million, $4.641 million of which is a general unsecured proof of claim by the debtor's estranged spouse, Kathleen Duncan, who is in her own chapter 7 bankruptcy case (Case No. 13-34461). The $4.641 million claim is based on allegations of breaches of fiduciary duties by the debtor against the debtor's and Kathleen Duncan's community, in the way the debtor invested millions of dollars in community assets.

It is clear from the itemization of the trust assets that there would be sufficient cash to pay all unsecured claims except for Kathleen Duncan's $4.641 million claim. The unsecured claims except for the $4.641 million claim total approximately $250,000.

As to the $4.641 million claim, it is an unliquidated and disputed tort claim that is subject to litigation. The claim was not scheduled by the debtor in Schedule F. With this in mind, the court cannot account for the $4.641 million claim at face value. If Kathleen Duncan loses in the litigation, her claim

could be even $0.00. Given this, it is probable that the trustee in this case may pay all unsecured creditors in full and have substantial funds to return back to the debtor. The court then is satisfies that the debtor has standing to oppose the approval of the settlement.

Turning to the merits of the opposition, the debtor has raised substantial questions as to the accounting upon which this settlement is based. The court realizes and understands that this is a settlement agreement and many times in a settlement the estate gives up something it may be entitled to receive otherwise.

Here, however, the trustee does not seem to have considered the accounting questions raised by the debtor. As the trustee has not considered all challenges to the accounting, the court cannot determine that the settlement is in the best interest of the creditors and the estate.

While the trustee may eventually reach the same settlement with the trust and Renee Duncan, after considering the questions raised by the debtor, until the trustee considers the debtor's questions, she has not exhausted and executed her obligation to the creditors to take into account all claims of the estate to the trust assets. Given this, the motion will be denied without prejudice.

Finally, the court cannot and will not determine the extent, validity or priority of the estate's interest in the trust absent an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

15. 12-35176-A-7 NMB-1 DEUTSCHE BANK NATIONAL TRUST CO. VS.
ROBERT SALAS AND CYNTHIA CROTEAU-SALAS
MOTION FOR RELIEF FROM AUTOMATIC STAY 1-20-14 [47]

Tentative Ruling: The motion will be dismissed as moot.

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

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On January 28, 2012, the debtors filed a chapter 13 case (case no. 12-21657). But, the court dismissed that case on April 4, 2012 due to the debtors' ineligibility for chapter 13 relief and failure to make plan payments. The debtors filed the instant case on August 19, 2012. The chapter 13 case then was pending within one year of the filing of the instant case.

The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on September

18, 2012, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on September 18, 2012, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

16. 12-22680-A-7 REBECCA POWELL — OBJECTION TO EXEMPTIONS
SLC-1 — 1-8-14 [23]

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtor's $22,000 exemption under Cal. Civ. Proc. Code § 703.140(b)(5) of her claim in a class action for lost wages and damages against a former employer, arguing that the claims were not disclosed in the originally-filed petition and were not disclosed at the meeting of creditors.

The debtor opposes the objection, claiming that there was no bad faith on the part of the debtor in failing to disclose the claims in the petition documents and at the meeting of creditors.

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

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

The objection is timely as it was filed within 30 days of the last amendment of Schedules B and C on December 12, 2013. Docket 18. This objection was filed on January 8, 2014.

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."

A claim of exemption is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Under Rule 4003(c), once an exemption has been claimed, the objecting party has the burden to prove that the exemption is improper. Carter at 1029 n.3; Cerchione at 548. This means that the objecting party has both the burden of production, *i.e.*, to produce evidence in support of the objection (also known as the burden of going forward) and the burden of persuasion. Carter at 1029

n.3; Cerchione at 548.

But, when the objecting party produces sufficient evidence to rebut the presumptive validity of the exemption claim, the burden of production shifts to the debtors to establish the validity of the exemption. Even though the burden of persuasion always remains with the objecting party, when the objecting party overcomes the presumptive validity of the exemption claim, the debtors have the burden "to come forward with unequivocal evidence to demonstrate that the exemption is proper." Carter at 1029 n.3; see also Cerchione at 549.

The standard for the objecting party's burden of persuasion is preponderance of the evidence. Nicholson at 631-33, 634 (holding that the applicable standard to exemption objections is preponderance of the evidence and citing Grogan v. Garner, 498 U.S. 279, 286 (1991), and resolving the issue of what is the standard for establishing bad faith in the context of exemption objections). "Proof by the preponderance of the evidence means that it is sufficient to persuade the finder of fact that the proposition is more likely true than not." Id. at 631 (quoting United States v. Arnold & Baker Farms (In re Arnold & Baker Farms), 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994)).

Exemptions can be amended at any time during the pendency of a bankruptcy case, unless they are asserted in bad faith or would prejudice creditors. Arnold v. Gill (In re Arnold), 252 B.R. 778, 784 (B.A.P. 9th Cir. 2000); see Fed. R. Bankr. P. 1009(a); see also In re Rolland, 317 B.R. 402, 424 (Bankr. C.D. Cal. 2004). Bad faith is determined by examining the totality of the circumstances. Rolland at 414-15.

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present." Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold at 786. The concealment of assets, though, is sufficient to constitute bad faith. Arnold at 785-86; Rolland at 415.

In June 2011, the debtor retained an attorney to assist her with an unemployment benefits appeal. This resulted in the debtor obtaining unemployment benefits. In the course of representing the debtor in the appeal, the debtor's attorney also discovered that her former employer had misclassified the debtor and many other of its employees. In December 2011, the debtor authorized her attorney to file a class action against the employer, naming the debtor as the lead plaintiff. See Docket 17.

This case was filed on February 10, 2012 and the trustee conducted a meeting of creditors on March 21, 2012. The debtor did not disclose the subject claims in the original Schedule B filed on the petition and did not disclose the claims at the meeting of creditors. On April 30, 2012, the debtor's attorney filed the class action against the debtor's former employer. The debtor received her discharge on May 25, 2012. See Docket 17.

On December 12, 2013, the debtor filed a motion to reopen the case. The same day she filed Amended Schedules B and C, disclosing the class action claims and

exempting their full value. The court reopened the case on December 17, 2013. The trustee was appointed on December 18. This objection was filed on January 8, 2014.

The trustee has not satisfied her burden of persuasion that the exemption is asserted in bad faith or is otherwise improper. The court is not persuaded that the late disclosure and exemption of the class action claims amounts to bad faith or is otherwise improper. Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold at 786.

The court is not convinced that there was any intent to deceive or conceal the claims. It was the debtor herself who decided that the claims have to be disclosed in the bankruptcy case. The motion to reopen the case was filed by the debtor on her own volition. She did not reopen the case to disclose the claims because someone had already disclosed the claims to the U.S. Trustee. There is no evidence of this in the record.

Additionally, there is no evidence from the trustee that the debtor is reopening the case to disclose and exempt the claims because she cannot collect the settlement proceeds. The sole supporting declaration executed by the trustee says nothing about this. See Docket 25.

Further, the debtor's exemption claims under Cal. Civ. Proc. Code § 703.140(b)(1) and (5) in her original Schedule C totaled only $13.87, meaning that the debtor could have easily claimed the claims as exempt under Cal. Civ. Proc. Code § 703.140(b)(5) if she had disclosed the claims on the petition date. The court is persuaded that the debtor did not have any fraudulent intent, malice, ill will or an affirmative attempt to violate the law when she failed to disclose and exempt the claims in her original schedules.

Finally, there is no prejudice to anyone in the delay of disclosure of the claims. As the court noted, the debtor's exemptions under Cal. Civ. Proc. Code § 703.140(b)(5) had been virtually unused. Also, the objection does not even mention prejudice to anyone by the delay in disclosure and exemption of the claims.

Accordingly, the objection will be overruled.

17. 13-35985-A-7 RAUL DURAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1
ALLY FINANCIAL VS. — 1-23-14 [10]

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, Ally Financial, seeks relief from the automatic stay with respect to a 2012 Chevy Malibu. The movant has produced evidence that the vehicle has a value of $14,475 and its secured claim is approximately $26,579.

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 January 29, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

18. 13-34495-A-7 DEBRA SMITH — ORDER TO SHOW CAUSE 1-21-14 [38]

Tentative Ruling: The petition will be dismissed.

The debtor filed an Amended Schedule F on January 6, 2014, but did not pay the $30 filing fee. This is cause for dismissal. See 11 U.S.C. § 707(a)(2). The court's waiver of the petition filing fee on February 3, 2014 does not waive the fees associated with other filings in the bankruptcy case. While the debtor could have requested waiver of the filing fee for the Amended Schedule F, there is no such request for waiver on the court's docket.

THE FINAL RULINGS BEGIN HERE

19. 13-34309-A-7 TIMOTHY HEINZ
KER-1
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-9-14 [20]

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, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $122,247 and it is encumbered by claims totaling approximately $192,853. The movant's deed is in first priority position and secures a claim of approximately $153,853.

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 19, 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.

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.

20. 13-33618-A-7 CAROLE BAIRD
DNL-3

MOTION TO
EXTEND DEADLINE
1-23-14 [60]

Final Ruling: This motion has been voluntarily dismissed by the moving party.

Docket 77.

21.	13-26437-A-7 DMW-4	PACIFIC CREST DOOR CO, INC.	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $3,939.50, EXP. $191.36) 1-13-14 [34]

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 $3,939.50 in fees and $191.36 in expenses, for a total of $4,130.86. This motion covers the period from May 23, 2013 through January 11, 2014. The court approved the movant's employment as the estate's accountant on May 27, 2013. In performing its services, the movant charged hourly rates of $325 and $345.

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

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

22.	13-29741-A-7 JCW-1 CITIMORTGAGE, INC. VS.	BETTY MIGUEL	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-31-13 [24]

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, Citimortgage, seeks relief from the automatic stay as to a real property in Huntsville, Alabama.

Given the entry of the debtor's discharge on October 28, 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 $75,371 and it is encumbered by claims totaling approximately $71,590. The movant's deed is in first priority position and secures a claim of approximately $57,287. Thus, there is equity in the property and relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

Nevertheless, there is cause for the granting of relief from stay as to the estate. The trustee has filed a non-opposition to the motion and the court is granting the trustee's motion for abandonment of the subject property on this calendar.

The court concludes that there is no evidence that the property 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)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The 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.

23. 13-33744-A-7 GERASSIMOS VERTEOURI — MOTION TO CONVERT CASE TO CHAPTER 13
CAH-3 — 1-9-14 [32]

Final Ruling: The motion has been voluntarily dismissed by the movant, with the agreement of the chapter 7 trustee - the only party that has filed a response to the motion. Docket 49.

24. 11-48547-A-7 DAMON/JENNIFER WYCKOFF — MOTION TO REOPEN CASE
DEF-3 — 1-13-14 [35]

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

The motion will be granted.

The debtor requests the court to reopen the case so he can file and have the court adjudicate a lien avoidance motion.

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

The case will be reopened for the limited purpose of permitting the debtor to file and the court to adjudicate a lien avoidance motion. The motion will be granted.

25. 11-48547-A-7 DAMON/JENNIFER WYCKOFF — MOTION TO AVOID JUDICIAL LIEN
DEF-4
VS. AMERICAN EXPRESS CENTURION BANK — 1-13-14 [39]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46

F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against Debtor Jennifer Wyckoff in favor of American Express Centurion Bank for the sum of $11,518.19 on June 23, 2011. The abstract of judgment was recorded with Amador County on August 29, 2011. That lien attached to the debtor's residential real property in Volcano, 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 $171,000 as of the date of the petition. The unavoidable liens total $232,870 on that same date, consisting of a mortgage held by Freedom Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $21,602 in Amended Schedule C. Docket 45.

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

26. 11-49447-A-7 ROBIN/SHANNON FOX — MOTION TO APPROVE COMPENSATION OF TRUSTEE (FEES $1,997.50, EXP. $43.77) 1-3-14 [56]
DMB-6

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.

Cowan & Brady, attorney for the trustee, has filed what appears to be its first and final motion for approval of compensation. The requested compensation consists of $1,997.50 in fees and $43.77 in expenses, for a total of $2,041.27. This motion covers the period from January 5, 2012 through November 4, 2013. The court approved the movant's employment as the trustee's attorney on January 12, 2012. In performing its services, the movant charged hourly rates of $75 and $325.

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

included, without limitation: assisting the trustee with the recovery of non-exempt assets and preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

27.	02-22348-A-7 DNL-27 VS. KEITH LEA	BLACK MARKET RECORDS, INC.	OBJECTION TO CLAIM 12-26-13 [347]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the $251,435 general unsecured proof of claim 8 filed by Keith Lea on May 16, 2013.

The proof of claim is based on a state court judgment the claimant obtained against a single defendant in the state court action, "Cedric Singleton dba Black Market Records." Mr. Singleton was the principal of the debtor. According to the attachments to the proof of claim, the state court judgment was entered on March 26, 2002 for $119,962.71. The remaining balance of the claim consists of $750 in post-judgment costs and $130,692.70 in post-judgment interest.

The objection will be sustained for two reasons. First, the debtor in this case, Black Market Records, Inc., is a corporation and it is a separate and distinct entity from Mr. Singleton. Mr. Singleton is not a debtor in this bankruptcy case. Based on a review of the attachments to the proof of claim, besides "Cedric Singleton dba Black Market Records," there were no other defendants in the state court action. Specifically, the debtor in this proceeding, Black Market Records, Inc., was not a defendant in the state court action. The state court judgment then was not entered against the debtor in this case. It was entered only against Mr. Singleton. The fact that Mr. Singleton may have been doing business under a sole proprietorship name of Black Market Records is immaterial. Mr. Singleton's dba Black Market Records is not the same entity as the separate and distinct debtor in this case, Black Market Records, Inc.

Further, even if the state court judgment were entered against the debtor, such judgment would have been void as to the debtor as the judgment was entered post-petition, on March 26, 2002. This case was filed on March 1, 2002. The claimant did not obtain relief from stay in this case to allow for the entry of a judgment against the debtor. The bankruptcy case docket shows no stay relief motions filed by the claimant prior to the March 26, 2002 judgment entry date.

The objection will be sustained.

28. 02-22348-A-7 BLACK MARKET RECORDS, INC. — OBJECTION TO CLAIM
DNL-28 — 12-26-13 [352]
VS. PLANET MEDIA SERVICES, INC.

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The trustee objects to the $47,952.37 general unsecured proof of claim 5 filed by Planet Media Services, Inc. on March 10, 2003.

The proof of claim is for goods - mainly compact disks - shipped by the claimant to Black Market Records at 2700 Fruitridge Road Sacramento, CA 95820 in April and June 2002. In other words, the proof of claim arose after the filing of this case on March 1, 2002.

The objection will be sustained will be sustained for at least two reasons. First, the invoices attached to the proof of claim are addressed to Black Market Records and not the debtor, Black Market Records, Inc.

More, the debtor's principal, Cedric Singleton, was known at the time when the claim was incurred to conduct other business under the sole proprietorship name Black Market Records. In other words, he used "Black Market Records" not only for the debtor corporation but also as a sole proprietorship. But, as the debtor is a corporation, it is a separate and distinct entity from Mr. Singleton and his Black Market Records sole proprietorship.

Second, while the chapter 7 trustee at that time was authorized to operate the debtor's business, he did not do any business with the claimant post-petition. He did not then order the goods upon which the proof of claim is based. Dockets 354 & 362. The trustee also does not recognize the address at which the claimant's goods were shipped.

The objection will be sustained.

29. 13-26551-A-7 MICHAEL HOLT — MOTION TO APPROVE COMPROMISE
SLF-15 — 1-13-14 [178]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor, who is in a conservatorship, resolving an objection to the debtor's $175,000 exemption claim in a real property in Ripon, California. The debtor's conservator is Lisa Berg. The property has been sold by the trustee. The court has approved the sale of the property already.

Under the terms of the compromise, the estate and the debtor will share equally in the $175,000 exemption claim. This resolves the estate's exemption objection. As part of this settlement, the trustee has agreed to the manner of payment of the debtor's exemption claim in a Porsche vehicle that was sold by the trustee.

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 intent of the debtor's conservator may have been to return the debtor back to the property, given the trustee's recovery of 50% of the exemption, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

30. 13-32751-A-7 FROILAN/VIOLETA TAFALLA — MOTION TO EXTEND DEADLINE 1-2-14 [22]
SLC-2

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

The motion will be granted.

The trustee requests a 91-day extension, from January 6, 2014 to April 7, 2014, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because the debtors have not appeared at any of the four meetings of creditors conducted by the trustee.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was January 6, 2014. The motion was filed on January 2, 2014. Thus, the motion complies with the temporal requirements of the rule.

The debtors did not appear at the initial meeting of creditors on November 6, 2013, nor any of the subsequent three continued creditors' meetings. This is cause for extension of the deadline for filing complaints objecting to the debtors' discharge. The motion will be granted. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to April 7, 2014.

31. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1
BANK OF AMERICA, N.A. VS. — 1-10-14 [80]

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, Bank of America, seeks relief from the automatic stay as to a real property in Yreka, California (611 French Street).

Given the entry of the debtor's discharge on December 18, 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 $75,325 and it is encumbered by claims totaling at least approximately $90,311. The movant claims that its deed is in first priority position and secures a claim of approximately $90,311.

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.

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

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

32. 14-20083-A-7 TIMOTHY DAVY — ORDER TO SHOW CAUSE 1-21-14 [12]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on January 24, 2014. No prejudice has resulted from the delay.

33. 13-33285-A-7 SCOTT BELSER — MOTION TO AVOID JUDICIAL LIEN 1-13-14 [15]
MOH-1
VS. PERSOLVE, L.L.C.

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

The motion will be granted.

A judgment was entered against the debtor in favor of Persolve, LLC for the sum of $21,297.59 on July 25, 2011. The abstract of judgment was recorded with Butte County on October 17, 2011. That lien attached to the debtor's residential real property in Oroville, 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 $130,584 as of the date of the petition. The unavoidable liens total $183,606.93 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

34. 13-21291-A-7 JOSEPH/KRISTINE PIRONE — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $4,375.50, EXP. $104.38) 1-13-14 [58]
GMR-2

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $4,375.50 in fees and $104.38 in expenses, for a total of $4,479.88. This motion covers the period from May 27, 2013 through January 10, 2014. The court approved the movant's employment as the estate's accountant on May 29, 2013. In performing its services, the movant charged hourly rates of $325 and $345.

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

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

35. 13-35191-A-7 LANI-MARIE QUEZADA — MOTION FOR RELIEF FROM AUTOMATIC STAY 1-3-14 [10]
APN-1
GATEWAY ONE LENDING &FINANCE 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, Gateway One Lending & Finance, seeks relief from the automatic stay with respect to a 2004 Land Rover Range Rover. The movant has produced some evidence that the vehicle has a value of $12,385 and its secured claim is approximately $17,008. Docket 12.

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 January 8, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

36. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-7
VS. MUNIQUIP, INC. — 12-27-13 [88]

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

The motion will be granted.

A judgment was entered against Debtor David Burkhart in favor of Muniquip, Inc., et al. for the sum of $17,689.36 on April 14, 2010. The abstract of judgment was recorded with Sacramento County on July 13, 2010. That lien attached to the debtors' residential real property in Elk Grove, 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 $320,000 as of the date of the petition. The unavoidable liens total at least $472,000 on that same date, consisting of a $300,000 IRS lien on the property and a mortgage for $172,000 in favor of Select Portfolio Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C.

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

37. 13-35093-A-7 PEASLEE DUMONT — MOTION TO COMPEL ABANDONMENT
JAS-1 — 1-15-14 [16]

Final Ruling: The movant has provided only 26 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 17. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.