UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 24, 2014 at 10:00 a.m.

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

2, 3, 10, 11

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 24, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 10, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 17, 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. 12-37632-A-7 JOSEPH/VALERIE GWERDER
SLF-2

MOTION TO
SELL AND TO APPROVE COMPENSATION
Of REALTORS SDREOS (FEES $16,660)
AND COLDWELL BANKER (FEES $11,900)
2-3-14 [44]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell, as is and free and clear of liens, the estate's interest in a real property in Zamora, California to David Welch and Kimberley Crum for $476,000. The sales price does not include a buyer's premium of $25,000 that is to be paid by the buyer. In addition to the purchase price and the buyer's premium, the buyer will pay $7,956.39 to Citi Mortgage on account of its claim secured by the property, will pay $1,500 to North Valley Bank on account of its claim secured by the property, and will pay the $1,000 Yolo County utility lien.

The trustee also asks for approval of the payment of the 6% real estate broker's commission and asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

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

The property is subject to the following encumbrances:

- a mortgage in favor of Deutsche Bank National Trust Company for $639,200, serviced by Ocwen Loan Servicing;

- a mortgage in favor of CitiMortgage for $159,800;

- a mortgage in favor of North Valley Bank for $150,000; and

- an Yolo County utility lien for $1,000.

The trustee is asking that the sale be approved free and clear of the secured claims held by Deutsche Bank / Ocwen, Citi Mortgage and NVB, as those entities have consented to the sale.

The gross sales proceeds of $511,456.39 (consisting of purchase price $476,000, buyer's premium $25,000, buyer's contribution to liens $10,456.39) will distributed as follows:

- $16,660 to the estate's real estate broker, SDREOS;

- $11,900 to the buyer's real estate broker, Coldwell Banker (total commissions equal to 6% of $476,000 purchase price);

- $2,930.58 for closing costs;

- $1,000 for Yolo County utility lien;

- $436,009.42 for Deutsche Bank / Ocwen claim;

- $12,956.39 for Citi Mortgage claim;

- $5,000 for NVB claim; and

- $25,000 for bankruptcy estate.

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given the consent to the sale by Deutsche Bank/Ocwen, CitiMortgage and NVB.

The court will approve the sale free and clear only of the claims held by Deutsche Bank / Ocwen, Citi Mortgage and NVB. The motion does not identify other claims of which the sale could be approved under 11 U.S.C. § 363(f).

The sale is in the best interests of the creditors and the estate. The court will approve the payment of the real estate commissions to SDREOS. Docket 22. The court will waive the 14-day period of Rule 6004(h).

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

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Kenneth Prag for the sum of $7,187.87 on March 14, 2000. The abstract of judgment was recorded with Tehama County on February 27, 2007. That lien attached to the debtor's residential real property in Red Bluff, California.

Kenneth Prag apparently assigned the judgment to Donald Feltsen of Civil Judgment Recovery Agency. See Docket 37.

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 $115,000 as of the date of the petition. The unavoidable liens total $45,975 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $115,000 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).

3. 11-41338-A-7 ERNESTO CABALLERO — MOTION TO COMPEL ABANDONMENT
SNM-4 — 2-5-14 [114]

Tentative Ruling: The motion will be granted as provided in the ruling below.

The debtor is asking the court to approve a stipulation with the trustee for the abandonment of a real property in Tracy, California.

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.

Although the debtor is asking for approval of a stipulation for abandonment with the trustee, 11 U.S.C. § 554(b) requires the court to determine whether the property is burdensome or of inconsequential value and benefit to the estate.

The property is over-encumbered and the debtor wishes to short-sell the property with the approval of the mortgagee, Bank of America. The scheduled value of the property is $297,350, whereas the encumbrances total $393,362, consisting of a single mortgage held by Bank of America. The proposed sales price is $265,000. Given the foregoing, the court determines that the property is of inconsequential value to the estate. The court will order abandonment of the property.

4. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-2
VS. CACV OF COLORADO, L.L.C. — 2-10-14 [23]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of CACV of Colorado, L.L.C. for the sum of $7,767.74 on May 26, 2006. The abstract of judgment was recorded with San Joaquin County on July 5, 2006. That lien attached to the debtor's residential real property in Manteca, California. The debtor is asking the court to avoid the lien.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $0.00 in Amended Schedule C. Docket 38.

However, 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.

5. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-3
VS. NORTHERN CALIFORNIA COLLECTION SERVICE, INC. — 2-10-14 [28]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Northern California Collection Service, Inc. for the sum of $6,094.27 on November 4, 2009. The abstract of judgment was recorded with San Joaquin County on December 7, 2009. That lien attached to the debtor's residential real property in Manteca, California. The debtor is asking the court to avoid the lien.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $0.00 in Amended Schedule C. Docket 38.

However, 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.

6. 10-31443-A-7 HELIA CARDOSO — MOTION TO AVOID JUDICIAL LIEN
BSH-4
VS. UNIFUND CCR PARTNERS — 2-10-14 [33]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of $17,165.01 on April 10, 2009. The abstract of judgment was recorded with San Joaquin County on February 16, 2010. That lien attached to the debtor's residential real property in Manteca, California. The debtor is asking the court to avoid the lien.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $160,000 as of the date of the petition. The unavoidable consensual liens total $161,005.03 on that same date, consisting of a first mortgage for $60,696.59 in favor of Guild Mortgage and a second mortgage for $100,308.44 in favor of Bank of Stockton. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $0.00 in Amended Schedule C. Docket 38.

However, 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.

7. 13-34051-A-7 KENNETH/NICHELLE MONTELONGO
BHT-1 PROVIDENT FUNDING ASSOCIATES, LP VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-14 [14]

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

The movant, Provident Funding Associates, seeks relief from the automatic stay as to a real property in El Dorado Hills, California.

The debtor opposes the motion, contending that the movant's loan secured by the property has been brought current.

Given the entry of the debtor's discharge on February 5, 2014, 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. This also means the debtor's opposition is moot, given the entry of discharge. And, the opposition is without merit – loan default is not a prerequisite to obtaining relief from the automatic stay. Of course, if the loan is not in default, the movant will be unable to do anything with its relief from the automatic stay.

As to the estate, the analysis is different. The property has a value of $507,355 and it is encumbered by claims totaling approximately $509,532. The movant's deed is in first priority position and secures a claim of approximately $388,170.

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 3, 2013.

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

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

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

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does

not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

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

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

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

8. 12-33467-A-7 RONALD DUNCAN — MOTION TO APPROVE COMPROMISE
DNL-10 — 12-24-13 [226]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from February 10, 2014. The trustee filed supplemental papers in support of the motion on February 14. Docket 251. An amended ruling from February 10 follows.

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 issues as to the division of the trust assets. Specifically, the debtor raises the following questions:

- the debtor's interest in the trust should not be debited $241,250, representing the amount of a note payable by the debtor's mother to Carmichael Construction Co., Inc.,

- there should be an $89,000 debit from Renee's interest in the trust for failure to take into account operating expenses paid by the trust 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).

By entering into the settlement, the trustee has considered the accounting questions raised by the debtor. She has reviewed the reports prepared by the various financial professionals, including Gerry White, the accountant the debtor is relying upon in his opposition. The trustee is satisfied that the settlement adequately considers the issues raised by the debtor.

As to the $241,250 Carmichael Construction note payment, the trustee is satisfied that the debit was appropriate. When the debtor received Carmichael Construction as distribution from the trust, the value of the company was set without considering the debt owed to the company on account of the promissory note payable by the trust, which note had been executed by the debtor's and Renee's mother before her passing.

In other words, when the debtor received the trust distribution of the company, the value of the distribution did not reflect the note owed by the trust to the company, making the distribution less in value than if the note had been taken into consideration.

Thus, when the trust finally paid off the note to the company, the value of the distribution of the company to the debtor was corrected.

As to the purportedly required $89,000 debit from Renee's interest in the trust, that amount has been offset by approximately $29,000 in trust expenses for which Renee has not been reimbursed and approximately $58,000 the debtor received from the liquidation of certificates of deposit he liquidated after the passing of their mother.

As to the alleged overstatement by $151,514 in rents imputed on Carmichael Construction, the trustee is satisfied that those amounts represent the rental value for the company's occupancy of the property on Wayside Avenue. The trustee has also discovered that the debtor wrongfully intercepted and retained at least $41,000 - and possibly up to additional $130,000 - from rents payable to the trust. The rents imputed on Carmichael Construction take into account only $41,000 of rents not received by the trust.

The trustee considered the above issues during the mediation process.

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the trustee's consideration and assessment of the papers and reports prepared by Bowman & Company, the debtor's CPA Gerry White, and Renee Duncan, given the additional up to $130,000 of rents intercepted and wrongfully retained by the debtor's Carmichael Company, given the trustee's assessment that the debtor would not be a credible witness in the event of litigation, 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.

This ruling does not determine the extent, validity or priority of the estate's or Renee's interest in the trust. Such determination requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

9. 14-20373-A-7 MARYLOU'S HOME CARE, L.L.C. ORDER TO SHOW CAUSE 1-16-14 [15]

Tentative Ruling: The petition will be dismissed.

This order to show cause was issued because the debtor failed to file an attorney's disclosure statement, schedules B, D, E, F, G, and H, the statement of financial affairs, and the statement re corporate debtor, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), and 11 U.S.C. § 521(a). This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

10. 14-20877-A-7 SEAN/SHANNON MCCARTHY MOTION TO
AJJ-1 COMPEL ABANDONMENT
2-7-14 [10]

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

The motion will be granted.

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

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

According to the motion, the business assets include equity / goodwill (with scheduled value of $500), a license (with scheduled value of $0.00), toys, outdoor play equipment, and supplies (with scheduled value of $2,000), with an aggregate value of $2,500. The assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

11. 14-21094-A-7 JAIME MIRAMONTES MOTION TO
MJH-1 COMPEL ABANDONMENT
2-6-14 [5]

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

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his gardening business, Andy's Gardening Service.

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

According to the motion, the business assets include receivables (scheduled value of $400), goodwill (scheduled value of $5,000), a chain saw, two lawn mowers, a trimmer, a trailer, receivables and good will. The assets have a total value of $9,600. The assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

THE FINAL RULINGS BEGIN HERE

12. 13-26504-A-7 IGNATIUS FRANCO
DNL-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $1,507.50, EXP. $29.14)
1-27-14 [43]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,507.50 in fees and $29.14 in expenses, for a total of $1,536.64. This motion covers the period from August 10, 2013 through January 16, 2014. The court approved the movant's employment as the trustee's attorney on August 23, 2013. In performing its services, the movant charged hourly rates of $150, $175, and $275.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing the estate's interest in a real property in Massachusetts and advising the trustee about the disposal of the property, (2) working on a potential short-sale of the property, (3) preparing and prosecuting an abandonment motion for the property, and (4) 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.

13. 14-20207-A-7 CHARLES/MARILYN GIPSON
APN-1
PRESTIGE FINANCIAL SERVICES, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-14 [12]

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

The motion will be dismissed as moot.

The movant, Prestige Financial Services, Inc., seeks relief from the automatic stay as to a 2007 Nissan Versa vehicle.

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 May 25, 2012, the debtors filed a chapter 13 case in the United States Bankruptcy Court for the District of Utah (case no. 12-26828). But, the court dismissed that case on January 6, 2014. The debtors filed the instant case on January 9, 2014. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on February 8, 2014, 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 February 8, 2014, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

14. 12-28413-A-7 F. RODGERS CORPORATION
SAR-2
MISSION TOWNHOUSES, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-17-14 [578]

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, Mission Townhouses, L.L.C. and SPS Construction, Inc., seeks relief from the automatic stay to proceed with its cross-claims for breach of contract and indemnity against the debtor. Recovery will be limited to available

insurance coverage.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance coverage, the court concludes that cause exists for the granting of relief from the automatic stay.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage.

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

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

15. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO EXTEND TIME
SLF-6 1-15-14 [44]

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 moves for a 61-day extension, from January 15, 2014 to March 17, 2014, of the time to assume or reject the debtor's executory contracts, as the trustee needs additional time to review and assess the necessity of the debtor's executory contracts. This is the third request for extension of the deadline.

11 U.S.C. § 365(d)(1) provides: "In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected."

The deadline to assume or reject executory contracts may be extended more than once. See Willamette Waterfront, Ltd. v Victoria Stations Inc. (In re Victoria Station Inc.), 875 F.2d 1380, 1385 (9th Cir. 1989) (addressing unexpired leases). This is also supported by the language of 11 U.S.C. § 365(d)(1), which does not limit courts in fixing "such additional time" for the assumption or rejection of executory contracts.

The Ninth Circuit's interpretation of the language "or within such additional time as the court, for cause, within such 60-day period, fixes," is that "the cause must arise within 60 days (and implicitly the debtor must file its motion

to show cause within that period) [and] there is no express limit on when the bankruptcy court must hear and decide the motion." Southwest Aircraft Services, Inc. v. City of Long Beach (In re Southwest Aircraft Services, Inc.), 831 F.2d 848, 850 (9th Cir. 1987) (addressing the identical language in pre-BAPCPA 11 U.S.C. § 365(d)(4)); see also Glimidakis v. Any Mountain, Ltd (In re Any Mountain, Ltd), Case Nos. NC-06-1006-JBS, 04-12989, 2006 WL 6810944 at *3-4 (B.A.P. 9th Cir. Nov. 3, 2006) (citing Southwest with approval).

"Under the section, the court's ability to extend the 60-day period is limited by a clause which includes three successive terms: 'for cause,' 'within such 60-day period,' and 'fixes.' It is not entirely clear whether the second term-'within such 60-day period'-modifies the term that precedes it or the term that follows it. If we read it as modifying 'fixes', then a bankruptcy court would not under the literal words of the statute have the authority to grant a timely motion to extend after the sixtieth day. That is the interpretation advanced by Long Beach, as well as by some bankruptcy courts in this and other cases. See In re House of Deals of Broward, Inc., 67 B.R. 23, 24 (Bankr. E.D.N.Y. 1986); In re Coastal Indus., Inc., 58 B.R. 48, 49 (Bankr. D.N.J. 1986); In re Taynton Freight Sys., Inc., 55 B.R. 668, 671 (Bankr. M.D. Pa. 1985). If, however, the 60-day term modifies 'for cause,' then while the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period), there is no express limit on when the bankruptcy court must hear and decide the motion. This more liberal reading of the statute would allow the bankruptcy courts to operate with greater freedom and flexibility. It is the one we adopt."

Southwest Aircraft at 850.

This petition was filed on March 15, 2013. The last day of the deadline under 11 U.S.C. § 365(d)(1) expired on January 15, 2014, pursuant to a prior extension of that deadline in an order entered on August 28, 2013. Docket 36. As this motion was filed on January 15, 2014, it is timely under 11 U.S.C. § 365(d)(1).

The trustee needs additional time to assess the estate's interest in the executory contracts, especially given the forthcoming administration of the estate's largest asset, a commercial real property in Tracy, California. This is cause for the granting of the requested extension. The deadline will be extended to March 17, 2014. The motion will be granted.

16. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO APPROVE COMPROMISE
SLF-7 1-27-14 [48]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and U.S. Bank, providing for a carve-out agreement pertaining to the sale of a real property in Tracy, California, consisting of commercial lots of undeveloped land. The scheduled value of the property is $17 million. U.S. Bank holds a claim for approximately $15,953,642, $7.5 million of which is secured by a deed of trust on the property, while the remaining $8,453,642.30 is unsecured.

The trustee believes that the property cannot be sold for a sufficient price to pay off U.S. Bank's secured claim.

Under the terms of the compromise, the trustee will attempt to sell the property and, if the court approves a sale of the property, the estate shall be entitled to receive a 10% carve-out of the gross sales price, but no more than $850,000. The seller's closing costs and the real estate commission will be paid from escrow. The remaining sales proceeds will be paid to U.S. Bank. Besides the claim held by U.S. Bank, there are no other voluntary encumbrances on the property.

However, there are outstanding property taxes exceeding $450,000 in Schedule D. Also, the trustee has discovered two mechanic liens, one for $409,913.50 and the other for $1,745,103. The trustee has obtained agreements with the mechanic lien holders for the sale of the property free and clear of their liens. The court has approved those respective agreements.

The trustee and U.S. Bank will execute general mutual releases.

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. Given that the property was part of an unsuccessful land development project, given that the trustee does not have a "clear" basis for avoiding U.S. Bank's lien on the property, given that the property has a value that is likely less than what is owed on U.S. Bank's secured claim, given that no payments are being made on account of the mortgage held by U.S. Bank, and given that the estate is unlikely to receive any proceeds from the sale of the property if U.S. Bank were to foreclose on it, the carve-out agreement 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.

17. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO EMPLOY
SLF-8 1-27-14 [54]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the 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 seeks to employ James Martin of Lee & Associates as a real estate broker for the estate. Mr. Martin will assist the estate with the marketing and sale of an undeveloped commercial real property in Tracy, California. The proposed compensation for Mr. Martin is a 5% commission if the commission will be shared with the buyer's agent and a 4% commission if the commission will not be shared.

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

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

18. 13-33618-A-7 CAROLE BAIRD MOTION TO ABANDON
DNL-4 1-23-14 [64]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Sacramento, California (5441 Hackberry Lane). The property is over-encumbered.

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

notice and a hearing.

The property has a an approximate value of approximately at least $600,000 and it is encumbered by claims totaling approximately $1,213,503. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

19. 13-33727-A-7 CARINA FERRER
PLG-1
VS. AMERICAN EXPRESS BANK, FSB AND AMERICAN EXPRESS CENTURION BANK

MOTION TO AVOID JUDICIAL LIEN
1-13-14 [27]

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 American Express Bank for the sum of $8,174.48 on August 2, 2013. The abstract of judgment was recorded with Solano County on September 3, 2013. That lien attached to the debtor's residential real property in Vallejo, California.

A judgment was entered against the debtor in favor of American Express Centurion Bank for the sum of $9,696.17 on August 2, 2013. The abstract of judgment was recorded with Solano County on October 10, 2013. That lien attached to the debtor's residential real property in Vallejo, 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 $313,000 as of the date of the petition. The unavoidable consensual liens total $493,043 on that same date, consisting of a first mortgage for $123,843 in favor of Wells Fargo Home Mortgage, a second mortgage for $250,000 in favor of Wells Fargo Bank, and a third mortgage for $119,200 in favor of Wells Fargo Bank. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 26.

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

20. 12-36729-A-7 MICHAEL/NAOMI ALFORD
APN-1
WELLS FARGO FINANCIAL CA, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-14 [109]

Final Ruling: This motion for relief from the automatic stay has been set for

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

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

The movant, Wells Fargo Financial California, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California (9196 Elder Creek Road).

Given the entry of the debtor's discharge on March 5, 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 $159,600 according to Schedule A and it is encumbered by claims totaling approximately $277,789. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee has filed a non-opposition to the motion.

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.

21. 13-36131-A-7 JULIE KOENIG
SMR-1
LYNARD KHAN VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-23-14 [14]

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

The motion will be granted.

The movant, Lynard Khan, seeks relief from the automatic stay as to a real property in Sacramento, California. The movant is the legal owner of the property and the debtor leased the property. The movant served the debtor with a 60-days notice of termination of tenancy on July 25, 2013. The debtor refused to vacate the property after expiration of the 60-day period. The movant then entered into a settlement agreement with the debtor for her to vacate the property by November 15, 2013. When the debtor failed to vacate the property on November 15, the movant filed an unlawful detainer action against the debtor on November 26, 2013. The debtor filed the instant case on December 30, 2013.

The movant seeks relief from stay to exercise her rights under state law to obtain possession of the property.

This is a liquidation proceeding and the debtor has no interest in the property as the movant is the legal owner of it. Even though the debtor is a tenant at the property, she has breached the lease agreement with the movant by failing to honor the notice of termination of tenancy. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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

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

22. 14-20134-A-7 LAURI HALE

ORDER TO
SHOW CAUSE
2-3-14 [28]

Final Ruling: The order to show cause will be discharged as moot.

This order to show cause was issued because the debtor filed an amended master address list on January 30, 2014 without paying the $30 filing fee. However, the order to show cause will be discharged as moot because the court waived the filing fee on February 11, 2014. Docket 35.

23. 13-35039-A-7 MARTIN/DEBRA MOORE — MOTION FOR RELIEF FROM AUTOMATIC STAY
CHARLES MCPEEK VS. — 1-17-14 [15]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

Further, the proof of service attached to Docket 15 does not identify the names and addresses of the parties served with the motion. It merely states that the motion papers have "been served by electronic mail upon parties on the Official Service List on January 17, 2014." As a result, the court cannot tell whether the motion has been properly served on the correct parties.

Additionally, the motion does not comply with Local Bankruptcy Rules 9014-1(d)(2), which requires that a motion be accompanied by a separate notice of hearing. The motion is not accompanied by a separate notice of hearing. The notice of hearing is lumped with the motion. Docket 15.

More, even if the court were to overlook the above deficiencies and assume that the motion was properly served on January 17, 2014, more than 28 days before the hearing in accordance with Local Bankruptcy Rule 9014-1(f)(1), the notice of hearing requires written opposition to be filed and served only five days before the hearing, "not later than February 19, 2014." This violates Local Bankruptcy Rule 9014-1(f)(1), which requires that written opposition be filed at least 14 days before the hearing. There is no local bankruptcy rule requiring written opposition to be filed and served five days before the hearing.

The notice of hearing also does not contain the date and time of the hearing in the heading of the pleading.

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

24. 13-35545-A-7 ELSA CARDOZA — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
U.S. BANK TRUST, N.A. VS. — 1-22-14 [16]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on February 5, 2014. See 11 U.S.C. § 362(c)(2)(B). The movant does not request retroactive relief from stay or relief under 11 U.S.C. § 362(d)(4).

25. 13-26551-A-7 MICHAEL HOLT — OBJECTION TO EXEMPTION
SLF-13 — 10-15-13 [142]

Final Ruling: The instant objection has been voluntarily dismissed by the

objecting party. Docket 192.

26. 13-34555-A-7 JOHN/GEORGIA SEITZINGER — MOTION FOR RELIEF FROM AUTOMATIC STAY
ABG-1 — 1-17-14 [13]
KINECTA FEDERAL CREDIT UNION VS.

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

The motion will be dismissed as moot.

The movant, Kinecta Federal Credit Union, seeks relief from the automatic stay with respect to a 2012 Honda Civic vehicle. In the statement of intention, the vehicle has been identified as a 2013 Honda Civic vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on November 14, 2013 and a meeting of creditors was first convened on December 11, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 11. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 11, 2013, by the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit

to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on December 11, 2013, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 11, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

27. 13-35057-A-7 BENJAMIN DUNCAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBB-1 — 1-13-14 [16]
BANK OF AMERICA, N.A. VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Saint Marys, Georgia. The property has a value of $75,000 and it is encumbered by claims totaling approximately $102,455. The movant's deed is the only encumbrance against the property.

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

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

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.

28. 14-20361-A-7 CHARLES DUNHAM — MOTION FOR RELIEF FROM AUTOMATIC STAY
TC-34
FIRST TECH FEDERAL CREDIT UNION VS. — 1-27-14 [10]

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

The motion will be dismissed as moot.

The movant, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2010 Subaru Impreza vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on January 15, 2014 and a meeting of creditors is scheduled for February 24, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than February 14. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on February 14, 2014, 30 days after the petition date.

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

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

Therefore, without this motion being filed, the automatic stay terminated on February 14, 2014.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

29. 12-33467-A-7 RONALD DUNCAN — OBJECTION TO CLAIM
RLC-2
VS. KATHLEEN DUNCAN — 12-13-13 [217]

Final Ruling: The objecting party has voluntarily dismissed this objection. Docket 253.

30. 14-20373-A-7 MARYLOU'S HOME CARE, L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
PKB-1
WELLS FARGO BANK, N.A. VS. — 1-21-14 [19]

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

The motion will be granted.

The movant, Wells Fargo Bank, as trustee for Carrington Mortgage Loan Trust, seeks retroactive and prospective relief from the automatic stay as to a real property in Sacramento, California, including relief under 11 U.S.C. § 362(d)(4), which provides that:

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

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

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

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

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The predecessor in interest to the movant, New Century Mortgage Corporation, made a loan for $391,920 to Maria Apuya secured by the property. New Century assigned the deed of trust to the movant on January 22, 2013. About the same time, Ms. Apuya defaulted on the loan. The movant recorded a notice of default on February 13, 2013. A foreclosure sale was scheduled for June 14, 2013.

On June 13, 2013, Ms. Apuya filed a chapter 7 case, Case No. 13-28014, which was dismissed on July 1, 2013 due to her failure to file petition schedules and statements.

On November 13, 2013, Ms. Apuya filed another chapter 7 case, Case No. 13-34510, which was dismissed on December 2, 2013 due to her failure to file petition schedules and statements.

On December 26, 2013, Ms. Apuya executed a quitclaim deed, transferring the subject property to the debtor, without the knowledge or consent of the movant.

The debtor filed this case on December 27, 2013.

The property was sold at foreclosure on December 30, 2013 at 10:06 a.m., without the movant's knowledge that the property had been transferred to the debtor and that the debtor had filed this bankruptcy case. The movant did not learn of the transfer to the debtor and the bankruptcy filing until 10:24 a.m. on December 30, 2013. Docket 22 at 36.

The court will enter an order pursuant to 11 U.S.C. § 362(d)(4).

The timing of the prior filings by Ms. Apuya indicates that they were efforts by her to delay and hinder the movant from exercising its contractual and statutory rights to obtain possession of the property. This is further substantiated by Ms. Apuya's transfer of the property to the debtor on the eve of filing this case. The prior filings were deficient as Ms. Apuya did not file bankruptcy schedules and statements, resulting in the dismissal of the cases.

The same is true about this case. This case was filed on December 27, 2013, one day after Ms. Apuya transferred the property to the debtor. Docket 22 at 38. The debtor has not yet filed an attorney's disclosure statement, schedules

B, D, E, F, G, and H, the statement of financial affairs, and the statement re corporate debtor, as required by Bankruptcy Rules 1007(b)(1), (c) and 2016(b), and 11 U.S.C. § 521(a).

From the foregoing, the court infers that the filing of the instant petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of the subject real property without the consent of the movant and involved multiple bankruptcy filings affecting the property.

Accordingly, the court will grant prospective relief from stay under 11 U.S.C. § 362(d)(4). The court will lift the stay to permit the movant to obtain possession of the property in accordance with state law, assuming the movant is the person who owns the property after the foreclosure sale. The order shall be binding in any other case under this title purporting to affect the subject property, filed no later than two years after the date of entry of the order. See 11 U.S.C. § 362(d)(4).

In addition, the court will annul the stay under 11 U.S.C. § 362(d)(4) with respect to the foreclosure sale that took place on December 30, 2013 at 10:06 a.m. This is the only act as to which the stay will be annulled, given that the movant found out about the instant bankruptcy filing 18 minutes after the foreclosure sale was completed.

No fees and costs are awarded because the movant has not established that it is an over-secured creditor. See 11 U.S.C. § 506. The movant says nothing about the value of the property in its motion.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived. No other relief will be awarded.

31.	13-35475-A-7 DNL-2	JOSE JIMENEZ AND MARIA GONZALEZ	OBJECTION TO EXEMPTIONS 1-27-14 [19]

Final Ruling: This objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent debtor 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 sustaining of the objection. 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 objection will be sustained.

The trustee objects to the debtors' exemption of their anticipated 2013 tax refund in the amount of $152 pursuant to Cal. Civ. Proc. Code § 704.070 and their "single family home" in the amount of $95,355 pursuant to Cal. Civ. Proc. Code § 704.730(a)(2).

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 on January 27, 2014, while the meeting of creditors has not been concluded yet. The trustee continued the initial meeting held on January 15, 2014 to February 21, 2014.

The court agrees with the trustee that Cal. Civ. Proc. Code § 704.070 does permit the exemption of tax refunds. The statute permits only the exemption of "paid earnings" that are defined as "earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy," meaning that the statute implicates only earnings paid to employees.

As to the exemption in the "single family home," that exemption does not identify the real property that is claimed as exempt. The debtors have listed two real properties in Schedule A. While they are likely claiming an exemption in their home and not in the property labeled as "brother's home," no one should have to speculate about which property is being claimed as exempt. The objection will be sustained with leave to amend the exemptions.

32. 13-24683-A-7 DENNIS KROEKER — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD-1 — 1-16-14 [73]
THE GOLDEN 1 CREDIT UNION VS.

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

The motion will be dismissed as moot.

The movant, The Golden One Credit Union, seeks relief from the automatic stay as to a real property in Sacramento, 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 February 3, 2011, the debtor filed a chapter 13 case (case no. 11-22787). But, the court dismissed that case on January 22, 2013 due to the debtor's failure to make plan payments. The debtor filed the instant case on April 5, 2013 as a chapter 13 case and converted it to chapter 7 on November 18, 2013. The prior 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 May 5, 2013, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on May 5, 2013, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

33. 13-34783-A-7 BRENT PANOS — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD-1 — 1-27-14 [16]
OCWEN LOAN SERVICING, L.L.C. 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, Ocwen Loan Servicing, seeks relief from the automatic stay as to a real property in Janesville, California. The property has a value of $159,500 and it is encumbered by claims totaling approximately $206,879. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on December 18, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

34. 14-20095-A-7 DAVID/MELODY YEATES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 1-20-14 [12]
THE SECRETARY OF VETERANS AFFAIRS 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, The Secretary of Veterans Affairs of the United States, seeks relief from the automatic stay as to a real property in Westwood, California. The movant acquired the property from the Department of Veteran Affairs of the State of California after the cancellation of a Cal-Vet long-term installment contract. The notice of cancellation was recorded on April 11, 2012 and the grant deed was recorded on June 8, 2012. On August 2, 2013, the movant served the debtors with a notice to quit. On October 11, 2013, the movant filed an unlawful detainer action against the debtors in state court. The debtors filed an answer to the eviction complaint on October 18, 2013. Trial was scheduled for January 7, 2014, but the debtors filed the instant bankruptcy case on January 6, 2014.

This is a liquidation proceeding and the debtor has no interest in the property as the movant acquired ownership interest in the property pre-petition. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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

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

35. 13-34696-A-7 JEFFREY JOHNSON — MOTION TO CONVERT CASE TO CHAPTER 13
JBJ-2 — 1-24-14 [50]

Final Ruling: The motion will be denied without prejudice.

First, the motion has not been served on three creditors listed in the verified master address list, including Diversified Adjustments, Enhanced Recovery Company, and Stockton Boat Works. Dockets 12 & 61. Also, the motion has been served at the wrong address on the San Joaquin County Collections, 350 East Weber Avenue Stockton, CA 95202. Docket 61. According to the master address list, however, the address for the San Joaquin County Collections is 750 East Weber Avenue Stockton, CA 95202.

Second, 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)."

Third, the motion violates Local Bankruptcy Rules 9014-1(d)(2) and (3), as it is not accompanied by a separate notice of hearing telling parties in interest whether and when to file opposition to the motion.

36. 13-34696-A-7 JEFFREY JOHNSON — MOTION FOR REMAND
JMD-3 — 2-5-14 [55]

Final Ruling: The hearing on this motion will be continued to the court's March 31, 2014 at 10:00 a.m. calendar.

Darrahville, L.L.C. and creditor James Darrah are asking the court to remand one of the two pending adversary proceedings in this bankruptcy case (14-2036 or 14-2037). The adversary proceedings were initiated by the debtor when he filed notices of removal for two pending state court actions. It appears that the movants are asking the court to remand both pending adversary proceedings in this case, Adv. Proc. Nos. 14-2036 and 14-2037, as Darrahville is a defendant in both actions. The movants are arguing remand, abstention, lack of standing, forum non-conveniens, and judicial economy

This motion should have been filed in the pending adversary proceeding, not in the main bankruptcy case. Accordingly, the hearing on this motion will be continued to the calendar on March 31, 2014 at 10:00 a.m., when the court hears motions in adversary proceedings

As it is difficult for the court to ascertain which of the possible two adversary proceeding this motion relates to, the movants shall supplement the motion explaining which adversary proceeding it concerns no later than March 3, 2014.

Any response to this motion may be filed and served no later than March 17, 2014 and reply may be filed and served no later than March 24, 2014. If timely response is not filed to the motion, the court may resolve this motion without oral argument in accordance with Local Bankruptcy Rule 9014-1(f)(1). The movant shall give notice of the continuance and of the foregoing deadlines no later than February 26. A proof of service shall be filed no later than

February 28.

37. 13-34696-A-7 JEFFREY JOHNSON — MOTION FOR REMAND
JMD-3 — 2-5-14 [57]

Final Ruling: The hearing on this motion will be continued to the court's March 31, 2014 at 10:00 a.m. calendar.

Darrahville, L.L.C. and creditor James Darrah are asking the court to remand one of the two pending adversary proceedings in this bankruptcy case (14-2036 or 14-2037). The adversary proceedings were initiated by the debtor when he filed notices of removal for two pending state court actions. It appears that the movants are asking the court to remand both pending adversary proceedings in this case, Adv. Proc. Nos. 14-2036 and 14-2037, as Darrahville is a defendant in both actions. The movants are arguing remand, abstention, lack of standing, forum non-conveniens, and judicial economy

This motion should have been filed in the pending adversary proceeding, not in the main bankruptcy case. Accordingly, the hearing on this motion will be continued to the calendar on March 31, 2014 at 10:00 a.m., when the court hears motions in adversary proceedings

As it is difficult for the court to ascertain which of the possible two adversary proceeding this motion relates to, the movants shall supplement the motion explaining which adversary proceeding it concerns no later than March 3, 2014.

Any response to this motion may be filed and served no later than March 17, 2014 and reply may be filed and served no later than March 24, 2014. If timely response is not filed to the motion, the court may resolve this motion without oral argument in accordance with Local Bankruptcy Rule 9014-1(f)(1). The movant shall give notice of the continuance and of the foregoing deadlines no later than February 26. A proof of service shall be filed no later than February 28.