UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 5, 2014 at 10:00 a.m.

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

2, 6, 8, 9

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 JUNE 3, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 19, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 27, 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 called beginning at 10:00 a.m.

1. 13-35811-A-7 RICHARD WILLIAMS — MOTION TO AVOID JUDICIAL LIEN
CLR-2
VS. TRIDENT INVESTMENT CORP. — 4-7-14 [21]

Amended Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Trident Investment Corporation for the sum of $11,464.80 on May 13, 2013. The abstract of judgment was recorded with Butte County on July 11, 2013. That lien attached to the debtor's residential real property in Oroville, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $150,000 as of the date of the petition. The unavoidable liens total $181,334 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank.

However, the motion will be denied because the property as to which the debtor is requesting lien avoidance has not been claimed as exempt.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). A creditor who has not timely objected to a claim of exemption may nevertheless challenge the validity of the exemption when defending a lien avoidance motion under se tion 522(f). Morgan at 152.

The formula in 11 U.S.C. § 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."

2. 12-39319-A-7 JULIAN/SANDRA TORRES — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
U.S. BANK N. A. VS. — 4-14-14 [83]

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to real property

in Rancho Cordova, California. The property has a value of $126,294 and it is encumbered by claims totaling approximately $152,381. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

3. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO SELL, TO APPROVE COMPROMISE, AND FOR DISMISSAL
PA-3 — 4-7-14 [133]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests approval of a compromise with the debtors, resolving a pending adversary proceeding against them. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

In the adversary proceeding, the trustee has asserted the following causes of action: revocation of discharge, turnover of property and accounting, and seeking declaratory relief. As part of the compromise, the trustee seeks authority to sell to the debtors for $240,000 the estate's interest in:

- real property on Parks Lane in Carmichael, California,

- a commercial real property on Arden Way in Sacramento, California, and

- a business known as Carz Avenue.

The proposed sale is as is, where is and is subject to all existing liens. As part of the purchase price, the debtors will pay the estate $140,000 in cash and will waive their $100,000 exemption in the Parks Lane property. The debtors will receive nothing from the sale proceeds. The dismissal of the revocation of discharge claim is not part of the subject compromise.

Arian Baraki and Mohammad Nayibkhil oppose the motion, challenging the trustee's decision to sell the estate's interest in the Arden Way property as part of a "package deal." They want to bid for the Arden Way property but not the other property involved in the proposed compromise.

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).

"'Although the bankruptcy court has "great latitude" in authorizing a compromise, it may only approve a proposal that is "fair and equitable"' to the creditors. MGS Marketing, 111 B.R. at 267, quoting Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir.1988). The settlement should be in the best interests of the estate (MGS Marketing, 111 B.R. at 266–67) and 'reasonable, given the particular circumstances of the case.' A & C Properties, 784 F.2d at 1381. And while a court generally gives deference to a trustee's business judgment in deciding whether to settle a matter, the trustee 'has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved.'"

Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

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

Arian Baraki and Mohammad Nayibkhil complain that the proposed sale is inequitable because potential overbidders do not have the option to bid for each of the assets sold separately. The opposing parties accuse the debtors of structuring the sale as a "package deal" to discourage potential overbidders from participating in the sale. The opposing parties are interested in bidding on the Arden Way property only.

The court disagrees.

The debtors did not "structure the sale" as alleged by the objectors. It was the trustee that has proposed the sale for approval with the court. And, it was the trustee that determined that selling the assets as a package, without allocating a purchase price for each of the assets being sold, including the Arden Way property, benefits the estate and the creditors.

As pointed out by the trustee in his reply, selling the assets in this manner has favorable tax implications for the estate.

More important, however, each of the assets being sold is a partial interest in property and/or is tangled with litigation and has marketability issues. Each of the assets carries "baggage" the trustee has considered in deciding that the assets are not marketable if sold separately.

All three assets being sold, including the Arden Way property, have continued

litigation implications for the estate. Selling the three assets in a "package deal" makes sense because it disposes of partial interest in property, and resolves serious litigation issues between the estate and the debtors and between the estate and the co-owners of the Arden Way and Parks Lane properties.

As to the Arden Way property, the debtors claim to own only 50% interest in it, with the other 50% interest owned by the opposing parties. The opposing parties, who are in their own bankruptcy, Case No. 12-36189-B-7, valued the entire Arden Way property at $420,000 in their Schedule A. Case No. 12-36189-B-7, Docket 14. The property is subject to a mortgage in favor of Sterling Bank for $470,466 and it is subject to various building code violations.

Although the trustee may probably generate some proceeds from the sale of the estate's 50% interest in the Arden Way property - as he previously received an unsolicited $500,000 offer from an individual named Tony Saca for the entire property - the trustee would have to incur attorney's fees and costs to litigate a 11 U.S.C. § 363(h) action, retain a real estate broker, market the property, and incur sale costs. To avoid these obstacles and expenses and the risk of generating insufficient equity to pay administrative expenses, the trustee has two options, sell the property to the debtors or sell it to the other 50% owner, *i.e.*, the opposing parties. The estate's 50% interest in the property is not marketable to anyone else.

However, as the opposing parties have themselves admitted that there is no equity in the Arden Way property and the debtors have offered to purchase the estate's 50% interest as part of an overall settlement and purchase of estate assets, it makes sense for the trustee to accept the offer proffered by the debtors.

It is suspicious that the opposing parties ascribed no equity in the Arden Way property in their own bankruptcy case, which closed in January 2013, yet they are now seeking to bid on the property. While their interest in bidding on the property may be explained by their running of a business from the property, that business was not listed in their bankruptcy schedules. The foregoing gives the trustee a reason to question the opposing parties' integrity and their motivation in seeking to bid only on the Arden Way property.

More important, the trustee's decision as to whom to sell the estate's 50% interest in the Arden Way property is quite easy to make in this case because there is little to no equity in the Arden Way property for the estate, especially when considering the opposing parties' representations in their own bankruptcy schedules.

Stated differently, separating the Arden Way property from the other assets for an individual sale would not generate more in benefit to the estate than selling the Arden Way property as package along with the other two assets and the settlement of the pending litigation. The benefit of generating little or no equity from the property if sold separately is outweighed by the benefit of a sale of all three assets and the resolution of all litigation with the debtors and third parties pertaining to the assets.

Incidentally, the court does not have probative evidence establishing any equity in the Arden Way property.

The trustee has met his burden of persuasion that sale of the Arden Way property together with the other two assets, without allocating a separate

purchase price for the property, is fair and equitable to the creditors of the estate.

As to the Parks Lane property, the debtors claim to own only 50% interest in it, with the other 50% interest owned by Wahab Sharifie. The property has been valued at $400,000 and it is subject to a mortgage of $244,200 and a $100,000 exemption. Even though the trustee disputes Mr. Sharifie's interest in the property, the trustee would have to litigate a fraudulent conveyance action to avoid the transfer creating Mr. Sharifie's interest in the property, before selling the property. A fraudulent conveyance action against Mr. Sharifie is likely to spur further litigation, against the debtors, explaining why they are eager to resolve the trustee's claim to 100% of the property. Selling the property to the debtors as part of an overall compromise also eliminates further attorney's fees and sale costs for the estate.

As to Carz Avenue, the debtors are purchasing the business without acknowledging any interest in the business. The debtors are denying owning any interest in the business. They contend that Mr. Sharifie owns the business. Thus, by "purchasing the business," the debtors are purchasing in actuality only the estate's claims that the debtors own the business. Anyone other than the debtors purchasing the business would be purchasing litigation.

The court rejects the opposing parties' contention that sale of the assets separately "will improve the chances that the estate will receive more money." Docket 137 at 8.

On the contrary, none of the assets would be marketable if sold separately. At this time, the estate owns only a partial, co-owner interest in the real properties. Anyone purchasing the estate's 50% interest in the Arden Way property would have to contend with the opposing parties as co-owners and anyone purchasing the estate's 50% interest in the Parks Lane property would have to contend with Mr. Sharifie as co-owner. Anyone buying the estate's interest in Carz Avenue would be buying it subject to the claims that the debtors did not own an interest in that business as of the petition date.

The trustee has met his burden of persuasion that sale of all three assets together and compromise of the pending litigation is fair and equitable to the creditors of the estate.

As to the source of the funds the debtors will use to pay the proposed purchase price, the debtors have signed a declaration under the penalty of perjury listing all individuals from whom they are borrowing funds, $151,517, to pay the purchase price. Docket 141. The court is satisfied that the debtors are borrowing in good faith from friends and relatives to make this sale happen.

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.

The sale will generate proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h). The motion will be granted.

4. 14-21730-A-7 TAMMY FIGUERA

MOTION TO ENFORCE 30 DAY STAY AND TO RESCIND UNLAWFUL EVICTION BY CA STATE COURT
3-5-14 [15]

Tentative Ruling: As indicated in its scheduling order, the court construes this motion to seek relief under 11 U.S.C. § 362(k).

The debtor, Tammy Figuera, complains that Jesbir Brar violated the automatic stay when he evicted her from her home in Rocklin, California on March 4, 2014.

This case was filed on February 24, 2014. Mr. Brar admits to having evicted the debtor from the property on March 4, 2014. He argues, though, that there was no automatic stay preventing the eviction by virtue of 11 U.S.C. § 362(b)(22), which provides that:

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

. . .

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

11 U.S.C. § 362(l) provides that:

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

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

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

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

(3)
(A) If the lessor files an objection to any certification filed by the debtor

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

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

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

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

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

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

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

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

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

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

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

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

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

Preliminarily, Mr. Brar's contention that the appeal filed by the debtor on March 26, 2014 divests this court from jurisdiction to hear this matter is meritless because the debtor obviously has appealed nothing associated with this motion, which the court is only now adjudicating.

"The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); [Marino v. Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 769 (B.A.P. 9th Cir. 1999)]; 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.32[1] (3rd ed. 1999). The trial court cannot take actions "over those aspects of the case involved in the appeal." Griggs, 459 U.S. at 58, 103 S.Ct. 400.

"The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the *order on appeal* because such supplementation would change the status quo. McClatchy Newspapers v. Central Valley Typographical Union, 686 F.2d 731, 734-35 (9th Cir. 1982)."

Hill & Sanford, L.L.P. v. Mirzai (In re Mirzai), 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999).

This motion is being heard for the first time on May 5, 2014 and the court has not entered any orders on this motion.

More, the court cannot tell which order is being appealed by the March 26, 2014 notice of appeal. The court entered two orders prior to the notice of appeal and neither of them can be appealed - one is an order entered on February 24 authorizing the debtor to pay the filing fee in installments (Docket 7) and the other is an order entered on March 6 setting a hearing on a motion for recusal (Docket 19). Both orders were entered more than 14 days prior to the notice of appeal hence an appeal on March 26 of these orders would be untimely. See Fed. R. Bankr. P. 8002(a).

Thus, the court fails to see how the March 26, 2014 notice of appeal divested this court from jurisdiction to adjudicate this motion.

Turning to the merits of the motion, 11 U.S.C. § 362(b)(22) does not apply to this case. That provision applies only to an "eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor." Mr. Brar is not a lessor of the debtor. He is not a lessor of anyone. Mr. Brar purchased the property at the foreclosure sale of the property, instituted by the debtor's or the debtor's husband's mortgagee. Mr. Brar does not have privity of contract with the debtor and 11 U.S.C. § 362(b)(22) does not apply.

This leaves the question of whether there was violation of the automatic stay. The eviction took place on March 4, 2014, just eight days after this case was filed on February 24. The court sees no reason why the automatic stay did not apply when the debtor was evicted from the property. For instance, 11 U.S.C. § 362(c)(4)(A) does not apply.

11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but

were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

While the debtor filed two recent prior cases, Case Nos. 11-24940-13-E and 11-35879-11-E, nether of those two cases "were pending within the previous year" before the instant case was filed. Case No. 11-24940-13-E was dismissed on May 4, 2011 and Case No. 11-35879-11-E was dismissed on July 27, 2011.

11 U.S.C. § 362(a) provides: "Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).

A creditor who has violated the automatic stay is required to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection. The stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

The "[d]ebtors ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Neither good faith belief that the creditor had a right to the property, nor good faith

reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

Mr. Brar obtained a judgment for possession of the property pre-petition, on September 27, 2013. By evicting the debtor from the property pursuant to that judgment on March 4, 2014, Mr. Brar was enforcing "against the debtor . . . a judgment obtained before the commencement of the case." Accordingly, Mr. Brar violated the automatic stay as to the debtor when he executed on the judgment for possession he obtained pre-petition.

Further, the violation was willful because Mr. Brar was aware of the automatic stay when he evicted the debtor but nonetheless proceeded with the eviction. The debtor presented Mr. Brar or his agents with a copy of the bankruptcy petition when Mr. Brar came to evict the debtor along with all other occupants of the property. Nevertheless, Mr. Brar proceeded with the eviction.

The court also notes that Mr. Brar does not deny anywhere in his papers that he knew of the automatic stay in this case when he evicted the debtor from the property.

And, a good faith belief that 11 U.S.C. § 362(b)(22) applied is not material. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996). A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Id.

Finally, the extent there is doubt that he knew of the bankruptcy prior to the eviction, he knew of it shortly thereafter, yet he did nothing to restore possession to the debtor when learning of the bankruptcy. Having evicted the debtor in violation of the automatic stay, the defendants had an obligation to restore the status quo. See Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1213-15 (9th Cir. 2002). That is, upon discovering that the debtor's petition predated the eviction, the creditor was required to put the debtor back in possession of her home. The creditor did not. At a minimum, this alone is a willful violation of the automatic stay.

The court does not reach the issue of damages as it has no evidence of what damages, if any, the debtor sustained from the violation of the automatic stay. This part of the motion will be continued for further briefing.

5.	14-21231-A-7 DMR-3	VICTOR MENDEZ-GONZALEZ AND RUTH MENDEZ	MOTION TO CONVERT TO CHAPTER 13 AS TO DEBTOR VICTOR MANUEL MENDEZ-GONZALEZ ONLY 4-11-14 [29]

Tentative Ruling: The motion will be denied without prejudice.

The debtor Victor Mendez-Gonzales requests conversion from chapter 7 to chapter 13. Although the motion does not state when, Victor Mendez-Gonzales and the co-debtor Ruth Mendez have separated.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

However, the motion will be denied because it does not state and does not have evidence about whether the debtor is eligible for chapter 13 relief as prescribed by Marrama. Stating that the debtor is eligible for chapter 13 relief is a legal conclusion that is unsupported by factual assertions. Accordingly, the motion will be denied.

6. 13-34447-A-7 LAURIE APARICO — MOTION TO AUTHORIZE TRUSTEE TO OPERATE RENTAL PROPERTY 3-27-14 [23]

Tentative Ruling: The motion will be granted.

The trustee is asking the court for authority to manage a rental property in Jackson, California by collecting the "monthly rent payments and pay[ing] the necessary utilities and minor repair costs, pending the anticipated sale of the property."

11 U.S.C. § 721 provides that "[t]he court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."

The trustee is actively marketing the property for sale but is desiring to collect the $650 in rental payments due from the tenant at the property. The trustee seeks authority also to pay the necessary expenses to maintain the property, such as utilities, insurance, and minor repairs. The trustee will submit required monthly operating reports to the U.S. Trustee and file such reports with the court.

The proposed operation and management of the property is in the best interest of the estate and the creditors and is consistent with the orderly liquidation of the estate's interest in the property and the estate in general. As the property is being actively marketed for sale, collecting the rental payments will enable the trustee to defray some of the maintenance costs until the property is sold. The court will authorize the operation and management of the

property until October 31, 2014, without prejudice to the trustee asking for authority to operate and manage the property beyond that date. The motion will be granted.

By granting this motion, the court is not authorizing the estate to use anyone's cash collateral.

7. 12-22251-A-7 JUAN/CLAUDIA RUELAS — MOTION TO AVOID JUDICIAL LIEN
SBS-3
VS. FRESNO TRUCK CENTER, INC. — 3-27-14 [55]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Juan Ruelas in favor of Fresno Truck Center, Inc. for the sum of $55,437.27 on February 11, 2010. The abstract of judgment was recorded with San Joaquin County on June 4, 2010. According to the motion, that lien attached to five real properties in Stockton, California (2336/2326 Vail St., 342 S. Cardinal Ave., 351 S. Cardinal Ave., 615/617 E. Channel, 619/621 E. Channel). The debtor is seeking avoidance of the lien on all five real properties.

The motion will be denied because, while the debtor has now amended Schedule C to claim exemptions in each of these properties, the values of the properties in the motion is different from the values of the properties in the Amended Schedules A and C. Docket 45. For instance, the value of 342 S. Cardinal Ave. in the motion is $102,200, whereas in the Amended Schedules A and C, the value of that property is $1,959,022.22. Dockets 55 & 45. There is a discrepancy as to the value of each of the other properties. The court will not address the merits of the motion until the values of the properties are corrected.

The court also notes that there is only one encumbrance listed in Schedule D against 342 S. Cardinal Ave., a mortgage for $195,355.89, meaning that the encumbrances cannot be $1,959,022.22. Docket 18.

Lastly, it would be helpful if the motion separateD out the analysis for each of the properties as to which the debtor is requesting lien avoidance.

8. 14-22367-A-7 JESUS GALVEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1
WELLS FARGO BANK, N.A. VS. — 4-10-14 [12]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2004 Ford F-150 vehicle. In Schedule B, the vehicle has been identified as a 2005 Ford F-150.

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 March 7, 2014 and a meeting of creditors was first convened on April 16, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 6. The debtor filed a statement of intention on the petition date but did not list the vehicle in the statement.

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

Here, although the debtor filed a statement of intention on the petition date, the debtor did not list the vehicle in the statement. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 6, 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 April 6, 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.

9. 13-31272-A-7 CALVIN/ROBYN DILES — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-21-14 [27]
U.S. BANK, N.A. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, U.S. Bank, seeks relief from the automatic stay as to real property in Suisun City, 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 March 8, 2013, the debtors filed a chapter 13 case (case no. 13-23094). But, the court dismissed that case on August 21, 2013 due to the debtors' failure to obtain timely plan confirmation. The debtors filed the instant case on August 27, 2013. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on September 26, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on September 26, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

FINAL RULINGS BEGIN HERE

10. 10-23706-A-7 RODNEY/NANCY BECHERE — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-2 — 4-7-14 [69]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,959.50 in fees and $124.62 in expenses, for a total of $6,084.12. This motion covers the period from October 7, 2013 through the present. The court approved the movant's employment as the trustee's attorney on November 15, 2013. In performing its services, the movant charged hourly rates of $90, $225, $250, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing and filing a motion to reopen the case, (2) analyzing personal injury claims and reviewing personal injury litigation settlement, (3) communicating with counsel for the debtor in the litigation and preparing a turnover letter, (4) negotiating with the debtor's bankruptcy and litigation counsel for turnover of the settlement funds, and (5) 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.

11. 08-24709-A-7 RICHARD LOPEZ AND BLANCA CAMBEROS — MOTION TO AVOID JUDICIAL LIEN
CLH-1
VS. UNIFUND CCR PARTNERS — 3-27-14 [39]

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

The motion will be granted.

A judgment was entered against Debtor Blanca Camberos in favor of Unifund CCR Partners for the sum of $10,710.20 on January 8, 2007. The abstract of judgment was recorded with San Joaquin County on May 22, 2007. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $340,000 as of the date of the petition. The unavoidable liens total $378,595 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C.

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

12. 08-24709-A-7 RICHARD LOPEZ AND BLANCA MOTION TO
CLH-2 CAMBEROS AVOID JUDICIAL LIEN
VS. MRC RECEIBABLES CORP. 3-27-14 [29]

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

The motion will be granted.

A judgment was entered against Debtor Richard Lopez in favor of MRC Receivables Corp. for the sum of $4,113.51 on June 29, 2007. The abstract of judgment was recorded with San Joaquin County on August 30, 2007. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $340,000 as of the date of the petition. The unavoidable liens total $378,595 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C.

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

13. 08-24709-A-7 RICHARD LOPEZ AND BLANCA CAMBEROS
CLH-3
VS. ASSET ACCEPTANCE, L.L.C.

MOTION TO AVOID JUDICIAL LIEN
3-27-14 [34]

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

The motion will be granted.

A judgment was entered against Debtor Blanca Camberos in favor of Asset Acceptance, L.L.C. for the sum of $13,180.38 on August 17, 2007. The abstract of judgment was recorded with San Joaquin County on October 22, 2007. That lien attached to the debtor's residential real property in Stockton, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $340,000 as of the date of the petition. The unavoidable liens total $378,595 on that same date, consisting of a single mortgage in favor of Ocwen Loan Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C.

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

14. 14-20610-A-7 JANET TRACY
JCW-1
M&T BANK VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-3-14 [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, M&T Bank, seeks relief from the automatic stay as to real property in Yuba City, California. The property has a value of $255,000 and it is encumbered by claims totaling approximately $352,932. The movant's deed is in

first priority position and secures a claim of approximately $271,357.

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 March 19, 2014. 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.

15. 11-48821-A-7 ALMA URIBE — MOTION TO EXTEND TIME 4-2-14 [54]
HCS-2

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

The motion will be granted.

The trustee asks for an extension of the deadline to object to a $73,370 amended exemption in a worker's compensation claim until 30 days after there has been final resolution of that claim, by judgment or dismissal. In the alternative, the movant asks for an extension of the deadline to July 2, 2014.

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 amended exemption of the claim was filed on March 3, 2014. Docket 48. This motion was filed on April 2, 2014, before the expiration of the 30-day deadline after the exemption amendment. Hence, the motion is timely.

The movant contends that prosecuting an exemption objection before the worker's compensation litigation has been resolved is waste of resources because it is uncertain whether the litigation will generate sufficient proceeds to benefit the estate.

The court agrees. The prior exemption claim was in the amount of $22,529.12, meaning that the movant would have to generate significantly more than this amount from the worker's compensation litigation in order to bring about a benefit to the estate. The movant has been litigating the worker's compensation claim via special counsel for nearly two years now.

Accordingly, the court will extend the deadline for objecting to the debtor's exemption in the worker's compensation claim filed on March 3, 2014, from April 2, 2014 until 30 days after the worker's compensation claim has been resolved, via judgment or dismissal. The motion will be granted.

16. 10-20029-A-7 BUALAI WHITE
DNL-8

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-4-14 [228]

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 $19,822.50 in fees and $516.67 in expenses, for a total of $20,339.17. This motion covers the period from March 1, 2013 through March 14, 2014. The court approved the movant's employment as the trustee's attorney on March 8, 2013. In performing its services, the movant charged hourly rates of $75, $150, $175, $225, $275, $375, and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) evaluating the estate's interest in various assets, (2) analyzing the debtor's exemption claim in a property in Sacramento,

(3) analyzing a proof of claim of the IRS, (4) negotiating a carve-out agreement with the IRS, (5) preparing the carve-out agreement, (6) preparing and prosecuting four sales motions, (7) addressing escrow issues, (8) preparing and prosecuting a motion to abandonment, (9) communicating with the debtor about tax issues, (10) advising the trustee about the general administration of the estate, and (11) 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.

17. 13-35529-A-7 GUSTAVO/ROSA VASQUEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-19-14 [20]
FLAGSTAR BANK, F.S.B. 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 in part and dismissed as moot in part.

The movant, Flagstar Bank, seeks relief from the automatic stay as to real property in Red Bluff, California.

Given the entry of the debtor's discharge on March 26, 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.

As to the estate, the analysis is different. The property has a value of $96,000 and it is encumbered by claims totaling approximately $158,314. 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 January 15, 2014.

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.

18. 12-39338-A-7 JAGDISH GOSWAMI — MOTION FOR SANCTIONS
13-2034 MBC-1
BASTAN V. GOSWAMI — 4-7-14 [37]

Final Ruling: The hearing on this motion is continued to May 12, 2014 at 10:00 a.m. as the court does not hear motions in adversary proceedings on this calendar.

19. 14-20038-A-7 JENNIFER HARK — MOTION FOR RELIEF FROM AUTOMATIC STAY
LET-2
NATIONSTAR MORTGAGE, L.L.C. VS. — 4-4-14 [29]

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, Nationstar Mortgage, seeks relief from the automatic stay as to real property in Tracy, California.

Given the entry of the debtor's discharge on April 16, 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.

As to the estate, the analysis is different. The property has a value of $180,000 and it is encumbered by claims totaling approximately $578,170. 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 March 19, 2014.

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.

20. 11-33847-A-7 HI TEC AUTOMOTIVE — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ACCOUNTANT
JRR-2 — 3-12-14 [49]

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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,025 in fees and $6.50 in expenses, for a total of $4,031.50. This motion covers the period from December 4, 2013 through the present. The court approved the movant's employment as the estate's accountant on December 6, 2013. In performing its services, the movant charged hourly rates of $190, $195, and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included preparing 505(b) request letters, preparing tax returns and communicating with the trustee about tax-related issues.

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

21. 14-21649-A-7 EUGENE SANTALOV — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1

GREEN TREE SERVICING, L.L.C. VS. 4-3-14 [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 granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Pollock Pines, California. The property has a value of $110,000 and it is encumbered by claims totaling approximately $190,659. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

22. 13-32852-A-7 LINDA ROGERS — MOTION TO
DRE-2 — AVOID JUDICIAL LIEN
VS. SAFE CREDIT UNION — 4-14-14 [29]

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

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution"

includes insured credit unions. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail and was not addressed to an officer of the respondent. It was not addressed to anyone. Docket 33. And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

The motion will be dismissed also because the motion papers were filed with the court only on April 14, just 21 days prior to the May 5 hearing date, even though the notice of hearing contains the language required by Local Bankruptcy Rule 9014-1(f)(1) and that rule requires that motion papers be both filed and served at least 28 days prior to the hearing date. Docket 30.

Finally, even if the motion had been properly filed and served, it would have been denied because all references to the subject judicial lien are hearsay. Fed. R. Evid. 802. The court does not have the recorded abstract of judgment in the record.

23. 13-35958-A-7 ARTURO SANTANA — ORDER TO SHOW CAUSE 4-8-14 [21]

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

This order to show cause was issued because the debtor filed an Amended Master Address List on February 6, 2014, but did not pay the $30 filing fee. However, the debtor paid the fee on April 15, 2014. No prejudice has resulted from the delay.

24. 13-34365-A-7 NADIR AHMADI
SLH-1 — MOTION TO COMPEL ABANDONMENT 3-20-14 [15]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in real property in Sacramento, California. The entire equity in the property is exempt.

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

value and benefit to the estate.

The debtor has scheduled the value of the property at $335,839. The property is encumbered by a single deed of trust in favor of Nationstar Mortgage in the amount of $271,204. The debtor has exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730(a)(2).

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

25.	14-21080-A-7 APN-1 GATEWAY ONE LENDING & FINANCE VS.	VADIM MATVEYEV AND NATALYA MATVEYEVA	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-25-14 [17]

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

The motion will be granted.

The movant, Gateway One Lending & Finance, seeks relief from the automatic stay with respect to a 2009 Pontiac Vibe.

The trustee filed a report of no distribution on March 19, 2014. The court also notes that the trustee filed a non-opposition to this motion. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay as to both the debtor and the estate.

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

The movant has produced evidence that the vehicle has a value of $10,715 and its secured claim is approximately $10,115.35. Docket 19.

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 be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.

26. 14-22781-A-7 THOMAS/HOLLY EARDLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 3-27-14 [9]
TD AUTO FINANCE, 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, TD Auto Finance, seeks relief from the automatic stay with respect to a 2012 Jeep Liberty. The vehicle has a value of $20,000 and its secured claim is approximately $27,388.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on April 29, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to

applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

27. 13-35989-A-7 MEGHAN O'KEEFE — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1
GREEN TREE SERVICING, L.L.C. VS. — 4-3-14 [16]

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

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

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Beachwood, Ohio.

Given the entry of the debtor's discharge on March 31, 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.

As to the estate, the analysis is different. The trustee filed a report of no distribution on January 23, 2014. The court also notes that the trustee filed a non-opposition to this motion. This is cause for the granting of relief from stay as to the estate.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The property has a value of $215,000 and it is encumbered by claims totaling approximately $212,903. The movant's deed is the only encumbrance against the property.

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.

28. 13-28491-A-7 JAMES ENGLISH
LET-1
FIRST HORIZON HOME LOANS VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-27-14 [59]

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the trustee. Docket 65.

29. 13-28491-A-7 JAMES ENGLISH
SW-1
ALLY FINANCIAL, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-17-14 [70]

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the trustee. Docket 75.