UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 19, 2014 at 10:00 a.m.

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

3, 9, 10, 12, 13, 19, 22, 27, 28

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 16, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 3, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 10, 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. 14-24008-A-7 CALVIN CHANG — MOTION TO COMPEL ABANDONMENT
CAH-1 — 4-21-14 [5]

Tentative Ruling: The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his law office business, Law Office of Calvin Chang. The debtor claims that all business assets are fully exempt.

The Regents of the University of California objects to the abandonment of any property not disclosed and exempted in the debtor's schedules.

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 only business assets listed in the motion are the law practice (valued at $1.00 in item 13 of Schedule B) and two bank accounts with Union Bank (ending on 6050 and 6043). Schedule B lists conflicting balances for the bank accounts. In item 2 of Schedule B, the balances listed for the accounts are $146.46 for account 6050 and $45 for account 6043. In item 13 of Schedule B, though, the balances listed for the accounts are $196 for account 6050 and $95 for account 6043. In Schedule C, the debtor has exempted only $146.46 in account 6050 and has exempted only $45 in account 6043. The $1.00 law office practice has been also claimed as exempt.

Given the exemption and the nominal nonexempt portion of the balances in the bank accounts ($49.54 nonexempt in account 6050 and $50 nonexempt in account 6043), 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 only to the extent of the assets listed in the motion.

The court is not making any determinations about other assets of the debtor's business, if any.

2. 13-23813-A-7 DALE/MARYANN ANDERSON — MOTION TO SELL
DNL-4 — 4-21-14 [42]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $11,975 the estate's interest in four vehicles, including: a 2007 Yamaha motorcycle, a 2006 Honda Pilot SUV, a 1995 Dodge 1500 pickup, and a 1997 Honda Accord to the debtors. The sale is subject to any liens or encumbrances.

The Yamaha vehicle has a scheduled value of $6,995 and it is subject to a claim totaling $5,140. The Honda Pilot has a scheduled value of $8,685 and it is subject to an exemption of $2,725. The Dodge vehicle has a scheduled value of $2,202, without any encumbrances. The Honda Accord vehicle has a scheduled value of $1,644, without any encumbrances. The nonexempt equity in the vehicles totals $11,661.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate and will avoid other administration costs for the liquidation of the vehicles, such as auction commissions and expenses. 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.

3. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION TO APPROVE REPORT AND COMPENSATION FOR AUCTIONEER
TAA-6 — 4-25-14 [53]

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

The motion will be granted.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,102.38 in fees and $0.00 in expenses. This motion is for a sale completed on April 3, 2014. The court approved the movant's employment as the trustee's auctioneer on March 10, 2014. The requested compensation is based on a 20% commission.

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

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

4. 13-35917-A-7 NEIL/LAURA REDDICK — MOTION TO AVOID JUDICIAL LIEN
LBG-1 — 4-21-14 [24]
VS. CAPITAL ONE BANK (USA), N.A.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Laura Reddick in favor of Capital One Bank for the sum of $5,977.74 on April 12, 2013. The abstract of judgment was recorded with Placer County on May 22, 2013.

The debtor seeks avoidance of an alleged judicial lien - resulting from Capital One's recorded abstract - on all his personal property listed in Schedule B.

The motion will be denied because it does not establish that Capital One holds a judicial lien on the debtor's personal property.

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (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)).

The various ways a creditor may create a lien in California against personal property of the judgment debtor are as follows.

Cal. Civ. Proc. Code § 697.520 provides: "A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010)."

Cal. Civ. Proc. Code § 697.510(a) provides: "A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

Cal. Civ. Proc. Code § 697.530(a) provides: "A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time when the lien is created if the personal property is, at that time, any of the following: (1) Accounts receivable, and the judgment debtor is located in this state. (2) Tangible chattel paper, as defined in paragraph (78) of subdivision (a) of Section 9102 of the Commercial Code, and the judgment debtor is located in this state. (3) Equipment, located within this state. (4) Farm products, located within this state. (5) Inventory, located within this state. (6) Negotiable documents of title, located within this state."

Cal. Civ. Proc. Code § 708.250 provides: "Service of summons on the third person creates a lien on the interest of the judgment debtor in the property or on the debt owed to the judgment debtor that is the subject of an action under this article."

Cal. Civ. Proc. Code § 708.320 provides: "(a) A lien on a judgment debtor's interest in a partnership or limited liability company is created by service of a notice of motion for a charging order on the judgment debtor and on either of the following: (1) All partners or the partnership. (2) All members or the limited liability company.

(b) If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished."

Cal. Civ. Proc. Code § 708.410(a) says that "A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following: (1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding. (2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding."

There is no evidence that the personal property in Schedule B is subject to a judicial or any other lien held by Capital One. The motion does not even discuss how a judicial lien was created on the personal property. The only evidence of a lien is the recorded abstract of judgment.

However, recording an abstract of judgment with a county recorder does not create a lien on personal property. It creates a lien only on real property. The debtor owns no real property and the motion is not seeking the avoidance of a lien on real property. As the debtor has not established the existence of a judicial lien on the personal property, the motion will be denied.

5. 13-35917-A-7 NEIL/LAURA REDDICK — MOTION TO AVOID JUDICIAL LIEN
LBG-2
VS. CAPITAL ONE BANK (USA), N.A. — 4-21-14 [29]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Laura Reddick in favor of Capital One Bank for the sum of $6,094.04 on April 12, 2013. The abstract of judgment was recorded with Placer County on May 22, 2013.

The debtor seeks avoidance of an alleged judicial lien - resulting from Capital One's recorded abstract - on all his personal property listed in Schedule B.

The motion will be denied for the reasons stated in the court's ruling on the related lien avoidance motion, DCN LBG-1. That ruling is incorporated here by reference.

6. 07-29026-A-7 MARK/PATRICIA BUCEDI — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1
HSBC BANK USA, N.A. VS. — 4-21-14 [70]

Tentative Ruling: The motion will be denied as unnecessary. As to the debtors' request for attorney's fees and costs, the hearing on the motion will be continued to June 30, 2014.

The movant, HSBC Bank U.S.A., seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1) and/or (2) as to a real property in Vacaville, California.

The debtors oppose the motion, pointing out that there is no stay in place because this case was closed previously. The debtors request attorney's fees and costs for responding to the motion.

The court agrees with the debtors. This case was filed as a chapter 7 on October 26, 2007. The debtors received their chapter 7 discharge on February 12, 2008. The case was closed on February 15, 2008. The case was reopened on October 26, 2012. Since then, the chapter 7 trustee has been administering assets.

Given the entry of the debtor's discharge on February 12, 2008, 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)(2)(C).

The stay expired as to the estate when the case was closed. See 11 U.S.C. § 362(c)(2)(A). And, no authority exists for reinstating the stay. Canter v. Canter (In re Canter), 299 F.3d 1150, 1155 n.1 (9th Cir. 2002). The stay is not in place and this motion is groundless. The motion will be denied as

unnecessary.

As to the debtors' request for attorney's fees and costs, the loan documentation contains an attorney's fee provision. Docket 73 at 13-14. And, Cal. Civ. Code § 1717 provides that:

"(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

The statute allows recovery of attorney's fees and costs by a party not entitled to such fees and costs under a contract, provided that party is the prevailing party in an action on the contract and the contract allows for the recovery of attorney's fees and costs by the losing party.

A motion for relief from the automatic stay is an action "on the contract" for purposes of recovering attorney's fees and costs allowable under an agreement between the parties and/or a state statute, even though the automatic stay is a creature of federal law. This court's reading of Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elec. Co., 549 U.S. 443 (2007) is consistent with the Bankruptcy Appellate Panel's decision in In re Hoopai, where the Panel held that Travelers "made clear that contract-based fees incurred in the course of litigating issues of federal bankruptcy law may be awarded pursuant to state law." Hoopai v. Countrywide Home Loans, Inc. (In re Hoopai), 369 B.R. 506, 511 (B.A.P. 9th Cir. 2007); Travelers at 451, 454.

The debtors shall file and serve evidence in support of their request for attorney's fees and costs no later than June 2, 2014. A written response to the evidence may be filed and served no later than June 16 and any reply to the response may be filed and served no later than June 23. The hearing on the motion will be continued to June 30, 2014 at 10:00 a.m.

7. 11-47630-A-7 FOR BABIES TO TEENS INC. MOTION TO APPROVE COMPROMISE
HSM-10 4-21-14 [78]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and Citibank, resolving a preference claim resulting from the debtor's transfer of $61,034.59 to Citibank within 90 days before the petition filing.

Under the terms of the compromise, Citibank will pay $10,000 to the estate in full satisfaction of the claim. In addition, Citibank waives all claims against the estate pertaining to the account at issue. The settlement also incorporates mutual releases between the parties.

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 cannot approve the compromise because the motion does not explain why settlement for 16.38% of the transfer value (($10,000 / $61,034) x 100) is in the best interest of the estate. This is especially puzzling given that the motion unequivocally states that the "Trustee believes that success on the merits would be likely although recovery would be reduced by attorneys' fees incurred on behalf of the estate." Docket 78 at 4. The trustee also acknowledges that "[c]ollection would not be difficult." Id. The court doubts that the estate's attorney's fees in prosecuting this action would approach $51,000, the approximate amount the trustee is giving up in this settlement. The court cannot conclude that this settlement is in the best interest of the creditors. The motion will be denied.

8. 11-47630-A-7 FOR BABIES TO TEENS INC. MOTION TO APPROVE COMPROMISE
HSM-9 4-21-14 [86]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate and American Express Centurion Bank, resolving a preference claim.

Under the terms of the compromise, American will pay $27,500 to the estate in full satisfaction of the claim. American does not waive the filing of a proof of claim against the estate. The settlement incorporates 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 cannot approve the compromise because the motion does not identify the value of the transfer(s) being settled. The motion identifies only the proposed settlement amount. As a result, the court cannot determine whether this settlement is in the best interest of creditors. The motion will be denied.

9. 14-24330-A-7 STEVEN LARRABEE MOTION TO COMPEL ABANDONMENT
GW-1 5-2-14 [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 debtor requests an order compelling the trustee to abandon the estate's interest in his law office business, Law Offices of Steven H. Larrabee.

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:

- sole proprietorship, business name, location, and goodwill, valued at $0.00,

- office equipment, furnishings and supplies, as described in the motion, valued at $910,

- $9,335 in receivables, and

- $3,132 in receivables (in collection).

The above assets are encumbered by a $168,230 tax lien claim held by the IRS. In addition, the assets have been claimed fully exempt in Schedule C. Given that the assets are overencumbered and fully exempt, 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.

10. 13-34234-A-7 ALEXIS LEGARDA — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 5-1-14 [17]
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2007 Mazda CX-9 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 5, 2013 and a meeting of creditors was first convened on December 4, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 4. 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 4, 2013, the date for 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.

Therefore, without this motion being filed, the automatic stay terminated on December 4, 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.

11. 14-22641-A-7 JOYCE NAKASHIMA — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRG-1 — 4-2-14 [11]
VS. CAPITAL ONE, N.A.

Tentative Ruling: The motion will be granted.

The movant, Capital One, N.A., seeks relief from the automatic stay as to real property in Meadowvista, California.

The debtor complains that there is no evidence in the record that the movant holds any interest in the promissory note. While the movant may hold interest in the deed of trust, the debtor argues, the movant is not entitled to payment under the note and does not have standing to be seeking relief from stay as there is no evidence that it holds interest in the note.

After the court continued the hearing on this motion, the movant filed a supplemental declaration establishing that the original lender, Chevy Chase Bank, merged into the movant. Thus, the movant acquired all right, title and

interest in the loan, including the note, without the necessity for an endorsement. The movant has also established that it has possession of the note. Docket 24 at 2-3. Accordingly, the movant has standing to be seeking relief from stay as to the property.

The court finds it unnecessary to address the legal issues raised by the opposition.

The property has a value of $120,000 and it is encumbered by claims totaling approximately $406,466. The movant's deed is the only deed against the property, securing a claim of approximately $405,066.

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.

12. 12-32342-A-7 GUILLERMO/EUGENIA MUYOT — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS. — 4-29-14 [32]

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 in part and dismissed as moot in part.

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

Given the entry of the debtor's discharge on October 15, 2012, 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 $332,000 and it is encumbered by claims totaling approximately $797,899. The movant's deed is in first priority position and secures a claim of approximately $723,017.

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

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

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

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

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

13. 12-22251-A-7 JUAN/CLAUDIA RUELAS — MOTION TO AVOID JUDICIAL LIEN
SBS-4
VS. FRESNO TRUCK CENTER, INC. — 5-2-14 [61]

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

The motion will be granted.

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, and

- 619/621 E. Channel.

The debtor is seeking avoidance of the lien on all five real properties.

As to the 2336/2326 Vail St. property, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, that property has an approximate value of $66,500 as of the date of the petition. The unavoidable liens total $158,664.57 on that same date, consisting of a single mortgage in favor of Bank of the West. Docket 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 60.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of 2336/2326 Vail St. 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).

As to the 342 S. Cardinal Ave. property, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, that property has an approximate value of $102,200 as of the date of the petition. The unavoidable liens total $195,355.89 on that same date, consisting of a single mortgage in favor of Everhome Mortgage. Docket 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 60.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of 342 S. Cardinal Ave. 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).

As to the 351 S. Cardinal Ave. property, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, that property has an approximate value of $79,500 as of the date of the petition. The unavoidable liens total $157,632.50 on that same date, consisting of a single mortgage in favor of Bank of the West. Docket 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 60.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of 351 S. Cardinal Ave. 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).

As to the 615/617 E. Channel property, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, that property has an approximate value of $65,600 as of the date of the petition. The unavoidable liens total $126,639.94 on that same date, consisting of a single mortgage in favor of GMAC Mortgage. Docket 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 60.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of 615/617 E. Channel. 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).

As to the 619/621 E. Channel property, the motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, that property has an approximate value of $64,200 as of the date of the petition. The unavoidable liens total $134,744.82 on that same date, consisting of a single mortgage in favor of Bank of America. Docket 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 60.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of 619/621 E. Channel. 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. 12-33158-A-12 GREG HAWES — MOTION TO DISMISS CASE 2-6-14 [151]
JPJ-1

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

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case.

The debtor opposes the motion, stating that he will be filing "a new plan prior to the date of this hearing to resolve the issues addressed in the Trustee's Motion."

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

This case was filed on July 17, 2012. The last plan in the case was filed on August 20, 2012, over 1.5 years ago. Docket 42. The only hearing on plan confirmation was held on October 1, 2012. Dockets 76 & 82. The court denied confirmation and the debtor has filed no other plan with the court.

The court also notes that the debtor's response to the instant motion is not supported by any evidence and the response does not explain why the debtor has not obtained confirmation of a plan during the 20-month duration of this case. This amounts to unreasonable delay that is prejudicial to creditors, which is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.

15. 12-33158-A-12 GREG HAWES
SAC-13

MOTION TO
CONFIRM CHAPTER 12 PLAN
3-12-14 [158]

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to confirm his chapter 12 plan filed on March 12, 2014. As the court is not granting the debtor's valuation motions, it cannot confirm the plan. This motion will be denied.

16. 12-33158-A-12 GREG HAWES
SAC-7
VS. BANK OF AMERICA, N.A.

MOTION TO
VALUE COLLATERAL
1-28-13 [87]

Tentative Ruling: The motion will be denied without prejudice.

This motion has been assigned a docket control number of a motion that was filed originally over a year ago on January 28, 2013 and was dismissed by the debtor on June 28, 2013, after several continuances and further briefing. Docket 134; Dockets 87-134. When the debtor filed the instant motion, he did not file another motion or further evidence in support of the motion. Rather, he filed only an amended notice of hearing with the docket control number for the motion filed on January 28, 2013. Docket 168.

Assuming the debtor is seeking the valuation of his primary residence in Palo Cedro, California, in an effort to strip down the first mortgage on the property held by Bank of America, as sought in the original motion with DCN SAC-7, the evidence filed by the debtor about the value of the property with the original motion is stale and outdated. This is especially true as property values in California have recovered significantly from a year ago.

Moreover, the evidence of value submitted with the original motion, claiming that the property is worth $550,000, is as of July 17, 2012, when the case was filed. In other words, the asserted value for the property with this motion is approximately 21 months old. The court takes judicial notice of the fact that real property values in California have increased dramatically since July 2012. Fed. R. Evid. 201(c).

Given that this case has been pending without a confirmed plan for 21 months already and that many courts have taken the position that valuation of claims should be as of the plan confirmation and not the petition date, the court will not allow the debtor to value the property as of the petition date.

"Although the amount of a creditor's claim is fixed at the petition date, there is nothing to indicate that the value of the claim must also be determined at the petition date. Since modification of claims occurs only through debtors' plans, it is at confirmation that the bankruptcy court considers whether proposed modifications comply with requirements for confirmation. Thus, it may be entirely appropriate to value a claim at the time of plan confirmation. (Citations omitted).

"[E]ven though the bankruptcy court's rationale for valuing BAC's claim at confirmation was reasonable, the interpretation of § 1123(b)(5) as setting the determination of whether a claim is protected from modification at the date of confirmation is flawed. That approach improperly shifts the time for fixing a creditor's claim from the petition date to some future valuation date. It conflates the analysis of whether a creditor *holds a claim* with a determination of the *value* of that claim. The value of BAC' claim, whether it is secured or unsecured, is a distinct issue from whether BAC's claim is secured by the Debtors' principal residence."

BAC Home Loans Servicing, LP v. Abdelgadir (In re Abdelgadir), 455 B.R. 896, 902 (B.A.P. 9th Cir. 2011) (distinguishing between the time for fixing the amount of a claim and the time for valuing a claim and holding, on the other hand, that the appropriate time for determining whether the property is the debtor's principal residence is the petition date); Benafel v. One West Bank (In re Benafel), 461 B.R. 581, 587 (B.A.P. 9th Cir. 2011) (citing Abdelgadir with approval and recognizing that valuing a claim at plan confirmation is correct); In re Gutierrez, 503 B.R. 458, 462-63 (Bankr. C.D. Cal. 2013); In re Schayes, 483 B.R. 209, 214-15 (Bankr. D. Ariz. 2012); see also Mariners Inv. Fund, L.L.C. v. Delfierro (In re Delfierro), Case No. WW-11-1249-KiJuH, WL 1933316, at *1 (B.A.P. 9th Cir. May 29, 2012); Wages v. J.P. Morgan Chase Bank, N.A. (In re Wages), Case No. ID-12-1397-JuKiKu, WL 1133924, at *3 (B.A.P. 9th Cir. Mar. 7, 2014).

In short, the debtor should file a new valuation motion with current evidence of value for the property. This motion will be denied.

17. 12-33158-A-12 GREG HAWES — MOTION TO VALUE COLLATERAL
SAC-8
VS. BANK OF AMERICA, N.A. — 1-28-13 [95]

Tentative Ruling: The motion will be denied without prejudice.

As the court is denying the debtor's related valuation motion on this calendar, DCN SAC-7, it will deny this motion as well, given that it pertains to the same property and this motion has the same issues identified in connection with the other valuation motion. The ruling on the other valuation motion is incorporated here by reference.

18. 14-21862-A-7 ADRIAN DELGADILLO — MOTION TO AVOID JUDICIAL LIEN
WRF-3
VS. CAPITAL ONE BANK (USA), N.A. — 4-23-14 [25]

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to avoid a judicial lien held by Capital One Bank on a real property in Woodland, California.

The motion will be denied because the only evidence of the lien is inadmissible hearsay. Fed. R. Evid. 802. The only evidence in support of the motion is a declaration from the debtor. In the declaration, he states that Capital One obtained a judgment against him, the judgment was entered by the Yolo County Superior Court, and Capital One "recorded the lien . . . at the Yolo Recorder's office." Docket 25 at 2.

The above statements are inadmissible hearsay, given that they are made out of court - in the records of the state court - and are submitted for the truth of

the matter asserted. Fed. R. Evid. 801(a)-(c), 802. The court needs the documents from which the statements are made, *i.e.*, judgment, abstract of judgment, recordation page, etc. Such documents are not part of this record.

19. 14-22962-A-7 AMAN ULLAH — MOTION FOR
JWC-1 — RELIEF FROM AUTOMATIC STAY
VS. TRANSPORT FUNDING, L.L.C. — 4-7-14 [15]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Transport Funding, L.L.C., seeks relief from the automatic stay with respect to three Volvo semi trucks, which were surrendered to the movant pre-petition. Each of the vehicles is subject to a separate financing agreement between the debtor and the movant.

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 24, 2014 and a meeting of creditors was first convened on April 30, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 23. The debtor has not filed a statement of intention.

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, the debtor has not filed a statement of intention. 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 23, 2011, 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 23, 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.

20. 14-21665-A-7 WRF-3 — GERMAN OCHOA AND CLAUDIA DIAZ — MOTION TO REDEEM 4-23-14 [26]

Tentative Ruling: The motion will be denied.

The debtor seeks to redeem a 2006 Chevrolet Uplander vehicle with has approximately 166,753 miles and is in a fair condition. The private party Kelley Blue Book value of the vehicle is $2,040. The debtor listed GM Financial as holding a secured claim in the approximate amount of $4,912 in Schedule D.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522.

But, the motion must be denied because the debtor claimed an exemption in the vehicle in the amount of $0.00. This is tantamount to claiming no exemption in the vehicle. Absent an allowed exemption, the vehicle cannot be redeemed pursuant to section 722. If section 722 is not applicable, this is merely an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992).

21. 12-33467-A-7 DNL-12 — RONALD DUNCAN — OBJECTION TO EXEMPTIONS 4-9-14 [272]

Tentative Ruling: The objection will be sustained in part and overruled in part.

The trustee objects to the debtor's use of the special exemptions under Cal. Civ. Proc. Code § 703.140, as there is no spousal waiver from the debtor's spouse, Kathleen Duncan, who is in her own bankruptcy case, claiming exemptions under Cal. Civ. Proc. Code § 703.140. See Case No. 13-34461-A-7.

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."

In 2010, Fed. R. Bankr. P. 1019 was amended to include Fed. R. Bankr. P. 1019(2)(B), which provides that:

"When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) *Filing of Lists, Inventories, Schedules, Statements.*

. . .

(2) *New Filing Periods.*

. . .

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case."

See contra Smith v. Kennedy (In re Smith), 235 F.3d 472, 477 (9th Cir. 2000).

Here, this case was filed as a chapter 11 on July 20, 2012. The debtor filed his original Schedule C on July 27, 2012, claiming all exemptions pursuant to Cal. Civ. Proc. Code § 703.140(b). Docket 8. The case was converted to chapter 7 on April 30, 2013. Docket 70. The chapter 7 trustee concluded the meeting of creditors on July 14, 2013. On March 10, 2014, the debtor amended his Schedule C, exempting property that was previously unexempt and changing the exemption amounts as to property already exempt. Docket 271. On May 8, 2014, after this objection was filed, the debtor filed a Second Amended Schedule C, further changing the amounts of some of the exemptions.

As the debtor did not obtain plan confirmation during the chapter 11 portion of the case, Fed. R. Bankr. P. 1019(2)(B)(i) does not apply. Fed. R. Bankr. P. 1019(2)(B)(ii) does not apply either because the case was not previously pending in chapter 7, before the last conversion to chapter 7. Accordingly, a new 30-day time period for filing exemption objections commenced under Rule 4003(b) after this case was converted to chapter 7 on April 30, 2013. This means that the deadline to object to the debtor's original Schedule C by the trustee expired on August 13, 2013, 30 days after the chapter 7 trustee concluded the meeting of creditors on July 14, 2013.

After the debtor amended Schedule C on March 10, 2014, another deadline for objecting to the exemptions started. But, this new deadline pertains "only with respect to the exemptions added via the amendment." Bernard v. Coyne (In re Bernard), 40 F.3d 1028, 1032 (9th Cir. 1994). There is no new deadline for objecting to the originally claimed exemptions.

Hence, this objection is timely only as to the exemptions that have been amended by the debtor. Although this objection is raised only as to the Amended Schedule C filed on March 10, 2014 and the debtor filed a Second Amended Schedule C on May 8, 2014, after this objection was filed, the court will address the merits of the Second Amended Schedule C in light of this objection.

Cal. Civ. Proc. Code § 703.110(a) provides the following restrictions:

"The exemptions provided by this chapter or by any other statute apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact

that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions. Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

In cases filed by a single spouse, absent a waiver signed by both the filing and the non-filing spouse, waiving the right to claim the Cal. Civ. Proc. Code § 703.140 exemptions in another bankruptcy case, the debtor cannot claim the exemptions of Cal. Civ. Proc. Code § 703.140.

The exemption changes between the original Schedule C and the Second Amended Schedule C are as follows:

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(5) in 6121 Kenneth Avenue Carmichael, California (consisting of "residential rental, three lots, one residence"),

- deleting an exemption claim in a "Baby Grand Piano,"

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(5) in Carmichael Construction,

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(2) in a 1977 Corvette vehicle,

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(6) in a 1984 Ford Tractor vehicle,

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(2) in a platform trailer,

- adding an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(6) in a generator,

- decreasing an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(5) in "RC Duncan Development Co" from $100 to $1.00, and

- decreasing an exemption claim under Cal. Civ. Proc. Code § 703.140(b)(5) in "Investment in J. Markis Corp." from $1,000 to $1.00.

Dockets 8 & 276.

Rights to exemptions of property are determined as of the date the petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); Gaughan v. Smith (In re Smith), 342 B.R. 801, 806 (B.A.P. 9th Cir. 2006).

Even though Kathleen Duncan may no longer be the debtor's spouse, the debtor's right to exemptions must be adjudicated in light of his legal relationship with her as of the petition date, when they were still married one to another. Schedule I, filed on July 27, 2012, identifies the debtor as married. Docket 8.

And, although Kathleen Duncan has claimed exemptions in her chapter 7 bankruptcy case pursuant to Cal. Civ. Proc. Code § 703.140(b), such exemptions are still subject to change by her because Fed. R. Bankr. P. 1009(a) permits the amendment of schedules "by the debtor as a matter of course at any time before the case is closed." See, e.g., Case No. 13-34461-A-7, Docket 64 (April 21, 2014 Amendment to Schedule C). The case of the debtor's spouse is still open.

As the debtor has not filed a spousal waiver executed by Kathleen Duncan, he is not entitled to claim exemptions in the items that are the subject of the exemption changes in the Second Amended Schedule C. Each of those exemptions is claimed pursuant to Cal. Civ. Proc. Code § 703.140(b).

Hence, the exemptions in 6121 Kenneth Avenue Carmichael, CA, Carmichael Construction, the 1977 Corvette vehicle, the 1984 Ford Tractor vehicle, the platform trailer, the generator, "RC Duncan Development Co," and "Investment in J. Markis Corp." will be disallowed. The objection will be sustained in part and overruled in part.

22. 11-44274-A-11 GEOFFREY/MARIVIE FABIE — MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM
13-2069 DK-2 — O.S.T.
CARDILLO V. FABIE, ET AL., — 5-2-14 [39]

Tentative Ruling: The motion will be granted.

The plaintiff, Mike Cardillo, is asking that the court appoint his wife as guardian ad litem for him in this adversary proceeding.

Fed. R. Civ. P. 17(b), as made applicable here by Fed. R. Bankr. P. 7017, provides that:

"Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) MINOR OR INCOMPETENT PERSON.

(1) *With a Representative*.

. . .

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian

ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action."

The movant resides in San Jose, California and this appears to be his domicile. Thus, the movant's capacity to sue or be sued is determined by California law.

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

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

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

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

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

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

The movant filed the instant adversary proceeding on February 25, 2013. The defendants have extended a settlement offer to the movant, but - as described in a note from Dr. Manjari Aravamuthan - the movant "suffers from memory loss" and "[h]is judgement is severely impaired." Docket 39, Ex. A. The movant's memory loss and judgment impairment issues affect his processing of information and ability to reason, thus preventing him from making decisions in this litigation that are in his best interest. The court concludes that the debtor is incompetent for purposes of Fed. R. Civ. P. 17(c)(2).

The court also concludes that the movant's wife would be best suited to act on the movant's behalf during the pendency of this adversary proceeding. Accordingly, the court will appoint the movant's wife to serve as guardian ad litem for the movant during the pendency of this adversary proceeding. No other relief will be awarded.

23. 14-22878-A-7 JOY SAVERCOOL — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 4-14-14 [21]
SETERUS, INC. VS.

Tentative Ruling: The motion will be granted in part and denied in part without prejudice.

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Red Bluff, California.

The movant claims that the property has a value of $229,745 and it is encumbered by claims totaling approximately $241,443. The movant's deed is the only encumbrance against the property.

As to the estate, the motion will be denied because the court does not have any evidence of value for the property and it cannot determine whether there is equity in the property and whether the movant's interest in the property is adequately protected.

The property is not listed in Schedules A or D. The movant's valuation of the property is based solely on the debtor's Schedule F. The movant claims that the property has a value of $229,745 because this is the figure inserted by the debtor in Schedule F.

However, while Schedule F contains the figure of $229,745 next to the movant's name, the figure is under the column for "amount of claim." Schedule F does not require the listing of value for anything. There is no value for collateral in Schedule F as Schedule F contains the debtor's unsecured debt. Hence, the court does not have any evidence of value for the property.

As the court cannot determine whether there is equity in the property and whether the movant's interest in the property is adequately protected, the motion will be denied as to the estate.

As to the debtor, the analysis is different. In the statement of intention, the debtor has indicated an intent to surrender the property. This is cause for the granting of relief from stay as to the debtor.

Thus, the motion will be granted as to the debtor 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 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 asserts that the value of its collateral is less than the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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

24. 14-23482-A-7 JOHN GOULART — MOTION TO AVOID JUDICIAL LIEN
RDS-1
VS. DISCOVER BANK
4-9-14 [17]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $16,277.37 on December 21, 2007. The abstract of judgment was recorded with Placer County on February 22, 2008. That lien attached to the debtor's one-half interest in a real property in Newcastle, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $175,000 in Schedule C.

The motion will be denied because the court is not persuaded that the debtor is entitled to the claimed exemption.

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.

Rights to exemptions of property are determined as of the date the petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

Cal. Civ. Proc. Code § 704.950, which implicates only the debtor's declared homestead exemption rights under Article 5 (and not Article 4) of California's exemption scheme, provides that:

"(a) Except as provided in subdivisions (b) and (c), a judgment lien on real property created pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 does not attach to a declared homestead if both of the following requirements are satisfied:

(1) A homestead declaration describing the declared homestead was recorded

prior to the time the abstract or certified copy of the judgment was recorded to create the judgment lien.

(2) The homestead declaration names the judgment debtor or the spouse of the judgment debtor as a declared homestead owner.

(b) This section does not apply to a judgment lien created under Section 697.320 by recording a certified copy of a judgment for child, family, or spousal support.

(c) A judgment lien attaches to a declared homestead in the amount of any surplus over the total of the following:

(1) All liens and encumbrances on the declared homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien.

(2) The homestead exemption set forth in Section 704.730."

"In California, a homestead exemption may be asserted two ways. First, a declaration of homestead may be recorded. (Code Civ. Proc., § 704.920.) A recorded homestead protects the property from execution by certain creditors to the extent of the amount of the homestead exemption. (In re Mulch (Bankr. N.D. Cal. 1995) 182 B.R. 569, 572 [applying California homestead exemption].) Because many California debtors failed to file homestead exemptions, the legislature in 1974 enacted legislation which created an "automatic" homestead exemption.[] (Code Civ. Proc., § 704.720.) This exemption need not be memorialized in a recorded homestead declaration in order to be effective. 'The automatic homestead exemption is available when a party has continuously resided in a dwelling from the time that a creditors' lien attaches until a court's determination in the forced sale process that the exemption does not apply.' (In re Mulch, supra, at p. 572; Webb v. Trippet (1991) 235 Cal. App. 3d 647, 651, 286 Cal. Rptr. 742.)

As noted in In re Mulch, the two exemptions are distinct protections and they operate differently. The declared homestead provides greater rights than the automatic homestead. The declared homestead provides protection from a voluntary sale; judgment liens only attach to the equity in excess of consensual liens; and the protections of the declared homestead survive the death of the homestead owner. The proceeds from a voluntary sale may be reinvested within six months, thus allowing the debtor to invest in another residence. (In re Mulch, supra, 182 B.R. at p. 573.) On the other hand, the automatic homestead only entitles the debtor to protection from a forced execution sale."

Amin v. Khazindar, 112 Cal. App. 4th 582, 588-89 (2003).

"The Ninth Circuit Court of Appeals has determined that a debtor is not automatically entitled to the protections provided in the Article 4 automatic homestead exemption [(Cal. Civ. Proc. Code §§ 704.710 et al.)] upon showing a valid declaration of homestead under Article 5 [(Cal. Civ. Proc. Code §§ 704.910 et al.)]. Understanding this distinction is imperative, as the Article 4 exemption protections are applicable in a forced sale context (as here, where Debtor has filed his bankruptcy petition)—whereas the Article 5 protections only apply in voluntary sales."

Kelley v. Locke (In re Kelley), 300 B.R. 11, 19 (B.A.P. 9th Cir. 2003) (citing

Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson), 824 F.2d 754, 757-59 (9th Cir. 1987)).

"[T]he Court of Appeals indicated that the recording of a declaration of homestead does not automatically entitle the debtor to the homestead exemption set forth in CCP § 704.730. A debtor must first qualify for the automatic homestead prior to obtaining the additional benefits of the declared homestead exemption."

In re Pham, 177 B.R. 914, 917, 918 (Bankr. C.D. Cal. 1994) (citing to Anderson, 824 F.2d at 758-59 (9th Cir. 1987)).

"Section 704.730 merely states the amount of the homestead available under Article 4. By its terms the section neither confers benefits on homeowners nor sets forth requirements for entitlement to the automatic dwelling exemption. Thus, the recording of a declaration of homestead of a judgment debtor does not mean that the debtor is automatically entitled to the homestead exemption set forth in Cal.Civ.Proc.Code § 704.730."

Anderson, 824 F.2d at 758-59 (9th Cir. 1987).

"Katz places great significance on his lien status in a voluntary sale context, but such status is irrelevant to this chapter 7 case and lien avoidance proceeding. This is because the filing of a bankruptcy petition is the functional equivalent of a forced or involuntary sale under California law, thus allowing a claiming debtor to have the rights, benefits and protections of the automatic homestead provisions."

Katz v. Pike (In re Pike), 243 B.R. 66, 70 (B.A.P. 9th Cir. 1999) (citing In re Mayer, 167 B.R. 186, 189 (B.A.P. 9th Cir. 1994); In re Herman, 120 B.R. 127, 131–32 (B.A.P. 9th Cir. 1990); In re Cole, 93 B.R. 707 (B.A.P. 9th Cir. 1988)); see Redwood Empire Prod. Credit Ass'n v. Anderson (In re Anderson), 824 F.2d 754, 757-59 (9th Cir. 1987).

The motion will be denied because the Cal. Civ. Proc. Code § 704.950 exemption applies only in the voluntary sale context and the filing of a bankruptcy case is tantamount to an involuntary or forced sale of the property. The debtor must claim an exemption that applies to involuntary or forced sales. Such exemptions are found only in Article 4 of California's exemption scheme.

Second, even if Cal. Civ. Proc. Code § 704.950 applies in bankruptcy, the exemption requires a declaration of homestead. The declared homestead exemption requires that a party record a declaration stating that the residence is the "principal dwelling" of the declarant or his or her spouse. Cal. Civ. Proc. Code §§ 704.920, 704.930(a)(3); Stohlman & Rogers, Inc. v. Anderson (In re Anderson), Case Nos. NC-05-1384-BPaA, 05-10433, WL 6810946, at *2 (B.A.P. 9th Cir. Aug. 9, 2006).

However, the court does not have any evidence in the record of a declared homestead from the debtor. The debtor's supporting declaration does not state whether and when the debtor declared the property as his homestead. The timing of the declaration is important because even if the debtor had declared the property as his homestead, that would protect him only against subsequent judicial liens. Judicial liens recorded prior to the homestead declaration would not be affected by the homestead declaration. Cal. Civ. Proc. Code § 704.950(a)(1).

As the subject exemption is improperly claimed, it cannot be allowed and the court cannot avoid the lien because it does not impair a valid exemption. The motion will be denied without prejudice.

25. 14-23482-A-7 JOHN GOULART — MOTION TO AVOID JUDICIAL LIEN
RDS-2
VS. ROYAL BANK OF SCOTLAND, N.B. — 4-9-14 [12]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Royal Bank of Scotland for the sum of $15,572.16 on June 1, 2009. The abstract of judgment was recorded with Placer County on September 8, 2009. That lien attached to the debtor's one-half interest in a real property in Newcastle, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $175,000 in Schedule C.

The motion will be denied because the court is not persuaded that the debtor is entitled to the claimed exemption.

The motion will be denied in accordance with the ruling on the related lien avoidance motion, DCN RDS-1. That ruling is incorporated here by reference.

26. 14-23482-A-7 JOHN GOULART — MOTION TO AVOID JUDICIAL LIEN
RDS-3
VS. FIA CARD SERVICES, N.A. — 4-9-14 [22]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of FIA Card Services, N.A. for the sum of $14,873.50 on June 5, 2009. The abstract of judgment was recorded with Placer County on January 6, 2010. That lien attached to the debtor's one-half interest in a real property in Newcastle, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $275,000 as of the date of the petition. The unavoidable liens total $11,099.57 on that same date, consisting of a mortgage in favor of Bank of America. This leaves $263,900.43 of equity in the property. The debtor's interest in that equity is 50% or $131,950.21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $175,000 in Schedule C.

The motion will be denied because the court is not persuaded that the debtor is entitled to the claimed exemption.

The motion will be denied in accordance with the ruling on the related lien avoidance motion, DCN RDS-1. That ruling is incorporated here by reference.

27. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO ABANDON
HSM-7 — 5-2-14 [142]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Fair Oaks, California.

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 trustee recovered the property in an avoidance action but has been unable to sell the property for sufficient funds to pay the secured claims and realize a benefit for the estate. Although the debtors had originally valued the property at $275,000, the trustee's investigation had revealed that the property's value is closer to $450,000. The secured claims on the property totaled approximately $355,183 as of the petition date. The trustee has been unable to sell the property due to several factors, including: the property had been used as the site for an elderly care home business; the debtors' care home business had softened prior to the filing of the petition, prompting them to close their business at the property; the property had been unoccupied for a long time prior to the trustee taking possession of it; the property has been plagued by serious construction, HVAC and plumbing issues; pre-petition, the property had been vandalized; and the trustee is discovering that the property is not appreciating in the current real estate market.

Given the trustee's inability to sell the property and realize a benefit for the estate and given the issues associated with the property, the court concludes that the property is burdensome to the estate. It will be ordered abandoned. The motion will be granted.

28. 14-23698-A-7 JOSE HERNANDEZ AND SANDRA ORTIZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
SW-1 — 4-24-14 [9]
WELLS FARGO BANK, N.A. VS.

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

court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2011 Nissan Sentra. The movant has produced evidence that the vehicle has a value of $9,725 and its secured claim is approximately $16,333.

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 May 14, 2014. And, the movant has possession of the vehicle.

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

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

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

THE FINAL RULINGS BEGIN HERE

29. 11-38003-A-7 RICHARD/KRISTINA SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
WSH-1 — 4-10-14 [118]
ERIC TYE VS.

Final Ruling: The motion will be dismissed without prejudice because the proofs of service for the motion do not identify who was served with the motion and where the motion papers were served. Dockets 122 & 132.

30. 07-29026-A-7 MARK/PATRICIA BUCEDI — MOTION TO ABANDON
DNL-4 — 5-2-14 [79]

Final Ruling: This motion has been voluntarily dismissed by the movant. Docket 86.

31. 11-47630-A-7 FOR BABIES TO TEENS INC — MOTION TO APPROVE COMPROMISE
HSM-8 — 4-21-14 [82]

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.

The trustee requests approval of a settlement agreement between the estate and Graco Children's Products, Inc., resolving a preference claim that resulted from the debtor's transfer of $10,000 to Graco within 90 days before the petition date.

Under the terms of the compromise, Graco will pay $8,500 to the estate in full satisfaction of the claim. Graco does not waive the filing of a proof of claim against the estate. The settlement incorporates 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. That is, given the 85% recovery of the face value of the transfers

at issue 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.

32. 12-38930-A-7 TERRY/JAMIE YORK — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 4-1-14 [52]
BANK OF AMERICA, N.A. VS.

Final Ruling: The hearing on this motion was continued to June 30, 2014 at 10:00 a.m. Docket 61.

33. 11-21932-A-7 CYRISHJADE DISCIPULO — MOTION TO AVOID JUDICIAL LIEN
TJW-4 — 4-28-14 [35]
VS. MAGDALENA CASUGA

Final Ruling: The movant has provided only 21 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

34. 13-34845-A-7 SHARON SMITH — OBJECTION TO EXEMPTIONS
HCS-3 — 4-21-14 [57]

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 debtor, the creditors, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 debtor's exemptions of two bank accounts:

- a Chase Bank checking account (ending on 8683) with a balance of $2,181.05, claimed as exempt under Cal. Civ. Proc. Code § 704.730(a)(2) and

- Wells Fargo Bank checking account (ending on 1209) with a balance of

$9,272.60, claimed as exempt under Cal. Civ. Proc. Code § 704.730(a)(1) and Cal. Civ. Proc. Code § 704.115.

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

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

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

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

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

The standard for the objecting party's burden of persuasion is preponderance of the evidence. Nicholson at 631-33 (holding that the applicable standard to exemption objections is preponderance of the evidence and citing Grogan v. Garner, 498 U.S. 279, 286 (1991)).

Cal. Civ. Proc. Code § 704.730 provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability

is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

Cal. Civ. Proc. Code § 704.710(c) provides that "'Homestead' means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, 'homestead' also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired."

Cal. Civ. Proc. Code § 704.720(b) provides that "If a homestead is sold under this division [2, involving forced judicial sales] or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt."

In order for the debtor to avail herself of the exemptions in Cal. Civ. Proc. Code § 704.730, she must have "continuously resided in [the property] from the time that a creditor's lien attaches until a court's determination that the exemption applies." Kelley at 17 (citing Cal. Civ. Proc. Code § 704.710(c)).

Because rights to exemptions of property are determined as of the date the petition is filed, the question here is whether the debtor resided at the property from which the proceeds were generated on the petition date, November 21, 2013. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); Gaughan v. Smith (In re Smith), 342 B.R. 801, 806 (B.A.P. 9th Cir. 2006).

The objection to the Wells Fargo Bank account will be sustained. That account (ending on 1209) is described in Schedule B as containing "money left from sale of home in Acampo, CA and pension." Docket 1.

But, the debtor did not reside in the Acampo property as of the petition date. In item 15 of the statement of financial affairs, the debtor notes that she lived in Acampo property from 2005 until March 2013. This case was not filed

until November 21, 2013, approximately eight months after she moved out of the Acampo property.

Further, Cal. Civ. Proc. Code § 704.720(b) does not apply. First, it does not apply because the debtor did not claim that provision to be the basis for the exemption.

Second, it is true that while a debtor's right to exemptions is generally determined as of petition date, "where an applicable state law requires compliance with a pre-condition to maintain exempt status, the Ninth Circuit has clearly held otherwise." Smith at 806. "[I]f applicable state law requires certain conditions to be met as of the petition date, such as reinvestment, these conditions must be met in order to maintain exempt status." Smith at 807. Thus, to the extent the state law under which the exemption is claimed requires the debtor to take certain actions to maintain the property's exempt status, the bankruptcy court may consider the debtor's postpetition conduct as bearing on the debtor's right to exemption.

Cal. Civ. Proc. Code § 704.720(b) does not apply here because that provision does not contain any pre-conditions for the maintenance of an exemption. The statute merely says that the proceeds from a forced judicial sale are exempt for a period of six months. There are no pre-conditions in the statute. The only question is whether the proceeds were exempt under the statute as of the petition date. Thus, the operative time for deciding whether the exemption applies is still the petition date.

Third, Cal. Civ. Proc. Code § 704.720(b) allows for the proceeds from a *forced judicial sale* to be exempt for six months. Yet, the debtor disclosed in item 10 of the statement of financial affairs that she transferred her interest in the Acampo property to Timothy and Leslie LeBlanc on December 13, 2012. This was a private sale from which the debtor received proceeds. There was no forced judicial sale. The debtor has come forward with no evidence to show that the property was transferred as part of a forced judicial sale. The trustee has met his burden of going forward to rebut the presumptive validity of the exemption.

Fourth, even if the property were transferred in the context of a forced judicial sale, Cal. Civ. Proc. Code § 704.720(b) allows for the proceeds to remain exempt only for a six-month period after the debtor received them.

Here, however, the debtor transferred the property in December 2012, 11 months before filing this case in November 2013. Thus, the debtor cannot exempt the funds in the bank account to the extent they were received from the sale of the Acampo property, even if Cal. Civ. Proc. Code § 704.720(b) applies.

The objection to the Chase Bank account will be sustained because there is no connection between the funds in that account and any real property, let alone the homestead contemplated by Cal. Civ. Proc. Code § 704.730(a)(2). In Schedule B, the funds in the Chase account are identified only by "started for grandson," without any explanation about the source of the funds. The objection will be sustained.

35. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO EXTEND DEADLINE 4-18-14 [193]
PA-14

Final Ruling: This motion has been set for hearing on the notice required by

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

The motion will be granted.

Creditor Leo Speckert as trustee of California Capital Loans, Inc., Profit Sharing Plan, moves for a 194-day extension, from May 4, 2014 to November 14, 2014, of the deadline for filing complaints to determine the dischargeability of debts pursuant to 11 U.S.C. § 523.

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

The deadline for filing 11 U.S.C. § 523 complaints, pursuant to a prior extension of the deadline by the court, was May 4, 2014. Docket 185. This motion is timely as it was filed on April 18, 2014.

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

More, on August 15, 2013, the debtor's daughter filed a state court complaint against the movant, to quiet title of the property and set aside a deed of trust securing the movant's claim. The state court action is still in its discovery phase. Trial has been set for October 20, 2014.

Given the state court action pertaining to the property and its apparent inconsistency with the debtor's representations in connection with his obtaining the loan from the movant, cause for further extension of the deadline exists. The motion will be granted and the deadline will be extended to November 14, 2014.

36. 13-21767-A-7 DICK/KAREN HUIE — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
JRR-2 — 4-21-14 [33]

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.

John R. Roberts, a Professional Corporation, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,360 in fees and $0.00 in expenses. This motion covers the period from May 27, 2013 through April 21, 2014. The court approved the movant's employment as the trustee's attorney on May 22, 2013. Docket 23. In performing its services, the movant charged an hourly rate of $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, without limitation: (1) preparing, filing and prosecuting a fraudulent transfer complaint to avoid the transfer of oil and gas rights, (2) negotiating settlement of the avoidance action, (3) preparing and filing a motion to approve the settlement, 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.

37. 14-23081-A-7 VICTORY OUTREACH — MOTION FOR RELIEF FROM AUTOMATIC STAY
DO-1 — 4-10-14 [13]
AMERICAN RIVER BANK VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on April 21, 2014, dissolving the automatic stay as a matter of law. See 11 U.S.C. § 362(c)(2)(B). The motion is not seeking nunc pro tunc and/or 11 U.S.C. § 362(d)(4) relief.

38. 14-21184-A-7 SIMON RAMSUBHAG — MOTION TO COMPEL ABANDONMENT
SG-1 — 4-7-14 [16]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Sacramento, California. The equity in the property is fully 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 debtors have scheduled the value of the property at $341,000. The property is encumbered by a first deed of trust in favor of Green Tree Servicing in the amount of $151,759.40 and a second mortgage in favor of Ocwen Loan Servicing in the amount of $182,336, for a total of $334,095.40, leaving $6,904.60 of equity in the property. The debtor has exempted $6,904.60 in the property pursuant to Cal. Code Civ. Proc. § 703.140(b)(5).

Given the value of the property, the 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.

39. 14-20399-A-7 ROBIN/TRAVIS PARKER — MOTION TO SELL
BLL-2 — 4-21-14 [40]

Final Hearing: The hearing on this motion has been continued to June 2, 2014 at 10:00 a.m. Docket 49.