UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 12, 2013 at 10:00 a.m.

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

6, 8, 10, 11, 14, 16, 17

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 9, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 26, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 3, 2013. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO DEEM LATE FILED PROOFS OF CLAIM AS TIMELY
RAH-1 — 5-6-13 [474]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from June 24 to allow the movant to file and the court to consider additional evidence in support of the motion. The movant filed the evidence just prior to the June 24 hearing. An amended ruling from June 24 follows below.

JI Garcia Construction moves for leave to file a late proof of claim against the estate because JI did not receive notice of the instant bankruptcy filing and did not receive notice of the proof of claim bar date. The instant bankruptcy case was filed by F. Rodgers Corporation on April 30, 2012 and the proof of claim bar date was set for October 25, 2012. This motion was filed on May 6, 2013.

Fed. R. Bankr. P. 9006(b)(1) provides: "Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect."

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the debtor; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The evidence filed by JI on June 21, 2013 (Dockets 493 & 494) satisfies the court that the name in the contract, F. Rodgers Insulation and Specialty Contractor Corporation, is a dba for the debtor. The bid was submitted by the debtor and JI accepted the debtor's bid. It was only when the contract was drafted that JI wrote in the name of F. Rodgers Insulation and Specialty Contractor Corporation.

In addition, the court will deem JI's proof of claim as timely filed. JI was not aware of this bankruptcy case in time to file a timely proof of claim and there is no prejudice to anyone that the claim be deemed timely because no general unsecured creditor distributions have been made yet. The motion will be granted as provided in the ruling.

2. 13-27715-A-7 CALIFORMACY INC. MOTION FOR
WFH-2 ORDER ALLOWING TRUSTEE TO OPERATE
THE BUSINESS OF THE DEBTOR
7-29-13 [51]

Tentative Ruling: The motion will be granted in part.

The trustee seeks an order allowing him to operate the debtor's pharmacy business until it can be liquidated.

Section 721 provides that "the court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."

The debtor filed a chapter 11 bankruptcy case on June 5, 2013. The case was converted to a chapter 7 proceeding by order entered on July 17, 2013. The debtor's business is a pharmacy and its operation as a pharmacy requires a licensed pharmacist. The debtor's assets include prescription drugs and patient lists.

The trustee has received an offer for the purchase of the pharmacy and desires to sell it as an ongoing operation because California law requires that all prescription drugs be transferred by a licensed pharmacist within 10 days of closure of a pharmacy. The trustee is not a licensed pharmacist and is not allowed to possess or transfer the prescription drugs. And, a pharmacist cannot shut down the pharmacy unless he can transfer the prescription drugs to another licensed drug holder.

Although the trustee is not a licensed pharmacist allowed to operate the pharmacy, he will retain the debtor's licensed pharmacist, Vivek Navaneethan, and will monitor the debtor's operating budget and financial affairs. The trustee seeks to operate the pharmacy until a sale of the debtor's assets is consummated.

Given that the proposed operation will preserve the debtor's assets for liquidation and is without prejudice to the rights and claims of creditors secured by any assets, the court concludes that the proposed operation is in the best interest of the creditors and the estate. The court will allow the trustee to operate the pharmacy.

However, the court will not permit operation in perpetuity. The court will allow the trustee to operate the pharmacy only until December 31, 2013. If the trustee wishes to continue operating the pharmacy beyond this date, he must obtain further court order. The motion will be granted in part.

The granting of this motion is not permission for the trustee to use cash collateral and does not constitute compliance with applicable nonbankruptcy law.

3. 12-35623-A-7 RONALD/KIMBERLY SUTTON AMENDED MOTION FOR
12-2590 MWT-4 DISCRETIONARY ABSTENTION AND
KOSTECKI ET AL V. SUTTON ET AL RELIEF FROM AUTOMATIC STAY
ALLOY STEEL NORTH AMERICA, INC. VS. 6-12-13 [80]

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

The court continued the hearing on this motion from July 22 to see whether Judge Bardwil would grant a stay relief motion in the related bankruptcy case of the defendant's/debtor's entity, to allow the prosecution of the plaintiffs' claims against the entity in the state court action, which names the defendant here as well. Subject to hearing from the parties, the court will adopt its ruling from July 22, which follows below.

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

The plaintiffs in this proceeding, Andrew Kostecki and Alloy Steel North America, Inc., move for discretionary abstention and for the modification of the automatic stay to allow the plaintiffs to complete state court litigation against the defendant, Ronald Sutton.

The sole claim in the complaint is pursuant to 11 U.S.C. § 523(a)(2)(A). This court has exclusive jurisdiction to determine the non-dischargeability of debt under 11 U.S.C. § 523(a)(2). Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 869 (9th Cir. 2005); Rein v. Providian Financial Corp., 270 F.3d 895, 904 (9th Cir. 2001). Hence, this court cannot abstain and allow the state court to adjudicate the 11 U.S.C. § 523(a)(2) claim.

However, there is no need for two courts to adjudicate the debtor's liability and exposure for the underlying tort claim. If found liable, this court must determine whether the judgment is made nondischargeable by section 523(a)(2).

Section 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when he made them; (3) he made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff justifiably relied on the representations; and (5) as a result, the plaintiff sustained damage. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997); see also Providian Bancorp. (In re Bixel), 215 B.R. 772, 776-77 (Bankr. S.D. Cal. 1997) (citing Field v. Mans, 516 U.S. 59, 59-60 (1995) (holding that "§ 523(a)(2)(A) requires justifiable, but not reasonable, reliance")).

These elements are virtually identical to the elements of common law or actual fraud. Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999). But, only justifiable reliance is required under 11 U.S.C. § 523(a)(2). Justifiable reliance is less demanding than the reasonable reliance required for actual fraud under California law. See Field v. Mans, 516 U.S. 59, 61 (1995).

Hence, the court is willing to abate the prosecution of the subject complaint, until the state court litigation is resolved and to the extent the state court litigation includes actual fraud claims by the plaintiffs against the defendant. If the state court determines that the debtor has committed a fraud, the plaintiffs shall return to this court so it can determine whether 11 U.S.C. § 523(a)(2)(A) applies.

4. 13-28923-A-7 RENEE COUNS-WALKER — ORDER TO SHOW CAUSE 7-25-13 [17]

Tentative Ruling: The case will be dismissed.

The debtor filed Amended Schedules D and F on July 17, 2013, but did not pay

the $30 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

5. 13-24926-A-7 CHRIS LEONARD — MOTION TO AVOID JUDICIAL LIEN
RJB-1 — 7-11-13 [17]
VS. CHASE

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to avoid a judicial lien for $14,087 in favor of Professional Collection Consultants, encumbering the debtor's real property in Citrus Heights, California.

However, the motion will be denied without prejudice because there is no recorded abstract of judgment in the record evidencing a judicial lien in favor of PCC. Although the motion refers to an abstract of judgment, the exhibits to the motion contain only the judgment. The court has no evidence that the judgment was recorded creating a judgment lien against the property.

In addition, the motion refers to two different judgment lien holders. The prayer for relief in the motion refers to Chase, whereas the body of the motion refers to PCC. The court will not adjudicate the motion until it is clear who holds the lien, if any.

The motion will be denied without prejudice.

6. 13-28141-A-7 SUSAN WHITMAN — MOTION TO COMPEL ABANDONMENT
HLG-1 — 7-23-13 [13]

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

The motion will be granted.

The debtor seeks to compel the trustee to abandon the estate's interest in her flower shop business, My Flower Shop.

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 a refrigeration compressor, counter, cash register, tablet computer, two folding tables and three display shelves, inventory of flowers, greenery, vases, ribbons, baskets and other floral supplies, as listed in item 29 of Schedule B. The assets have an aggregate value of $2,200 and have been claimed fully exempt in Schedule C.

Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

7. 13-20543-A-7 KENNETH/SHIRLEY BARCUS — MOTION TO AVOID JUDICIAL LIEN
GDG-2 — 7-9-13 [24]
VS. HSBC BANK NEVADA, N.A.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Kenneth Barcus in favor of HSBC Bank Nevada, N.A. for the sum of $10,523.37 on October 18, 2010. The abstract of judgment was recorded with Sacramento County on August 15, 2011. That lien attached to the debtors' residential real property in Orangevale, California. The debtors are asking the court to avoid the lien pursuant to 11 U.S.C. § 522(f).

In Schedule A, the subject real property has an approximate value of $153,000 as of the date of the petition. The unavoidable liens total $289,135.63 on that same date, consisting of a sole mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $0.00 in Amended Schedule C. Docket 11.

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

8. 13-26754-A-7 DALE/SHERRY HALEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JAB-1 — 7-23-13 [25]
MERIWEST CREDIT UNION 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, Meriwest Credit Union, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $163,678 and it is encumbered by claims totaling approximately $480,825. The movant's deed is in first priority position and secures a claim of approximately $444,143.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on June 20, 2013.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not 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.

9. 11-35963-A-7 HERIBERTO/ALMA PONCE — MOTION TO COMPEL ABANDONMENT 6-10-13 [47]
ULC-2

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

The debtors seek the abandonment of their wrongful foreclosure claims in federal district court against Wells Fargo and Specialized Loan Servicing.

This case was filed on June 28, 2011. The debtors filed a Schedule B on the petition date but did not list any claims against Wells Fargo Bank. Docket 1. On August 4, 2011, the debtors filed an Amended Schedule B, listing "Future Claim as Result of Lawsuit against Wells Fargo Home Mortgage for Wrongful Foreclosure." On August 22, 2011, the trustee filed a report of no distribution. The debtors received their discharge on October 13, 2011 and the case was closed on October 20, 2011. Docket 40.

The court reopened the case on June 5, 2013, pursuant to a request of the debtors. The court has not appointed a trustee in this reopened case. The debtors filed Amended Schedules B and C on June 7, 2013, listing the following asset, "Pending lawsuit Ponce vs. Wells Fargo; Specialized Loan Servicing, LLC.: and DOES 1 through 100; Complaint for Damages and Equitable Relief for Wrongful Foreclosure in the United States Federal Court Eastern District of California, Case No.: 2:13-CV-0498 LKK DAD PS exempt up to $18,280.00 in damages." Docket 46.

11 U.S.C. § 554(c) provides: "Unless the court orders otherwise, any property scheduled under section 521 (a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered

for purposes of section 350 of this title."

As the claims against Wells Fargo were scheduled prior to the closing of the case, those claims were abandoned by operation of law when the case closed, on October 20, 2011. Thus, the court will deny this motion as unnecessary with respect to the claims against Wells Fargo.

Because the claims against Specialized Loan Servicing were not scheduled prior to the closing of the case, those claims were not abandoned by operation of law when the case closed.

The hearing on this part of the motion was continued from July 1, to allow the newly appointed trustee to review the claims against Specialized Loan Servicing and determine whether their administration would be in the best interest of creditors and the estate. Subject to the court hearing from the trustee that the estate would benefit from administration of the claims against Specialized Loan Servicing, the court is inclined to grant this part of the motion and order their abandonment.

10. 13-27663-A-7 JAMES PLATTER — MOTION FOR
CJO-1 — RELIEF FROM AUTOMATIC STAY
SUNTRUST MORTGAGE, INC. VS. — 7-19-13 [26]

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, Suntrust Mortgage, Inc., seeks relief from the automatic stay as to a real property in Rio Linda, California. The property has a value of $116,000 and it is encumbered by claims totaling approximately $250,135. The movant's deed is the only deed against the property, securing a claim for approximately $237,135.

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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

11. 11-34464-A-7 STUART SMITS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
TOYOTA MOTOR CREDIT CORPORATION VS. — 7-2-13 [228]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2005 Toyota Tundra 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 June 9, 2011 as a chapter 11 proceeding, it was converted to chapter 7 on February 8, 2012 and a meeting of creditors was first convened on March 19, 2012. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 9. 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 March 9, 2012, 30 days after the conversion 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 March 9, 2012.

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.

12. 12-25966-A-7 URSULA FILICE — MOTION TO COMPEL AND PROVIDE MARKETING ACCESS
JRR-4 — 6-11-13 [130]

Tentative Ruling: The motion will be granted in part.

The trustee seeks to compel the debtor and her family to vacate and surrender the debtor's residence in Somerset, California. In the alternative, the trustee asks for an order permitting him full access to the property, to market and sell the property.

The court's prior denial of a similar motion by the trustee does not prevent the trustee from seeking this relief. The court denied the trustee's prior motion because the trustee had not established that a sale of the property would benefit the estate. Now, however, the trustee has avoided the penalty portion of the tax liens, thereby making potential equity available that will benefit the estate.

Res judicata or claim preclusion bars the litigation in a subsequent action of any claims that were raised or could have been raised in the prior action. Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9 Cir. 2001) (citing Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9 Cir. 1997)). In order for res judicata to apply, three elements must be met (1) identity of claims, (2) final judgment on the merits, and (3) privity between the parties. Headwaters, Inc. v. United States Forest Serv., 399 F.3d 1047, 1052 (9 Cir. 2005).

In determining identity of claims, courts consider four factors: (i) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (ii) whether substantially the same evidence is presented in the two actions; (iii) whether the two suits involve infringement of the same right; and (iv) whether the two suits arise out of the same transaction or nucleus of facts. Rein v. Providian Fin. Corp., 270 F.3d 895, 903 (9 Cir. 2001); see also Associates v. Reed (In re California Litfunding), 360 B.R. 310, 322 (Bankr. C.D. Cal. 2007).

"The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out

of the same transactional nucleus of facts.'" Owens at 714 (quoting Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9 Cir. 2000)).

This motion and the prior motion do not arise from the same transactional nucleus of facts. The prior motion was based on the trustee's assertion that the bankruptcy estate would benefit from the sale of the property due to the invalidity of the debtor's exemption claim. In this motion, though, the trustee asserts that the benefit of the estate arises from the partial avoidance of tax liens for the benefit of the estate under 11 U.S.C. § 551, permitting the trustee to step into the priority of the tax liens to realize a benefit for the estate. As the trustee had not avoided the tax liens at the time of the prior motion, this was not a claim that was raised or could have been raised in the prior motion.

The evidence presented in this motion - the judgments partially avoiding the tax liens - is different from the evidence presented in the prior motion, i.e., the evidence pertaining to the disallowance of the exemption claim. Dockets 117 & 118. Also, the prior motion infringed on the debtor's exemption rights in the property, whereas this motion does not implicate the debtor's exemption rights in the property, as the trustee will be recovering only the portion of the tax liens avoided for the benefit of the estate.

The trustee prosecuted adversary proceeding actions against the two tax entities that hold secured tax claims against the property, the IRS and the FTB. The trustee obtained a judgment against the IRS avoiding $15,915.17 of the IRS' tax lien on the property pursuant to 11 U.S.C. § 724(a) and 11 U.S.C. § 551. Adv. Proc. No. 13-2076, Docket 11.

The trustee obtained a judgment against the FTB avoiding $27,204.84 of the FTB's tax lien on the property pursuant to 11 U.S.C. § 724(a) and 11 U.S.C. § 551. Adv. Proc. No. 13-2077, Docket 9.

11 U.S.C. § 724(a) provides that "[t]he trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title." 11 U.S.C. § 726(a)(4) says that "Except as provided in section 510 of this title, property of the estate shall be distributed . . . (4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim."

11 U.S.C. § 551 mandates that "[a]ny transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate."

In other words, to the extent the trustee has been successful at avoiding the tax liens of the IRS and the FTB on the real property, the avoided portion of those tax liens is preserved for the benefit of the estate. And, the avoidance enables the estate to collect the avoided portion of the tax liens at the priority to which the tax liens are entitled. 11 U.S.C. § 551 specifically forbids parties with junior priority claims from improving their position when the bankruptcy estate avoids a more senior priority claim.

The court notes that there is no dispute among the parties that the real property is property of this bankruptcy estate for purposes of 11 U.S.C. § 551.

See also Docket 118 at 1.

The real property, valued at approximately $400,000, is encumbered by the following claims or interests, in the following order:

- approximately $8,534 in outstanding property taxes,

- approximately $200,000 first mortgage in favor of Citifinancial,

- approximately $5,800 second mortgage in favor of Transamerica Financial,

- approximately $96,285 claim held by the FTB (liens recorded in 1999 and 2009), $27,204.84 of which has been avoided by the trustee (POC 8-1, 9-1),

- approximately $57,967.55 claim held by the IRS (liens recorded in 2008), $15,915.17 of which has been avoided by the trustee (POC 1), and

- $14,831.83 representing a judgment lien held by Unifund CCR Partners,

Total = $383,418.38.

As the tax liens come ahead in priority to the debtor's exemption claim, the court is satisfied that a sale of the property will benefit the estate. 11 U.S.C. § 522(c)(2)(B) (providing that "[u]nless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except . . . (2) a debt secured by a lien that is . . . (B) a tax lien, notice of which is properly filed"); see also 11 U.S.C. § 724(b) (outlining the priority of distribution pertaining to property securing tax liens).

Accordingly, the court will allow the trustee to market and sell the property for the benefit of the estate. Provided the debtor and her family cooperate with the trustee in the marketing and sale of the property, the court is not inclined to order them to vacate and surrender the property at this time. The motion will be granted in part.

This ruling does not resolve the priority of distribution between the judgment lien held by Unifund and the debtor's claim of exemption.

13. 13-27282-A-7 ADAM BOHNAK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JAB-1 — 7-23-13 [21]
REO ACQUISITION VEHICLE, LLC VS.

Tentative Ruling: The motion will be granted.

The movant, REO Acquisition Vehicle, LLC, seeks relief from the automatic stay as to a real property in Acampo, California. The movant purchased the property at a pre-petition foreclosure sale on May 29, 2013 at approximately 9:44 a.m. The debtor filed the instant petition on May 29, 2013 at 10:13 a.m. The movant seeks relief from stay to obtain possession of the property.

The debtor opposes the motion, contending that the foreclosure sale was improper. The debtor also complains that he has been unable to obtain a loan modification.

This is a liquidation proceeding and the debtor has no interest in the property

as the movant purchased it pre-petition. This is cause for the granting of relief from stay. The fact that the debtor is disputing the foreclosure sale is immaterial because at this time the movant has established a colorable claim to enforce a right against the property.

Motions for relief from stay are summary proceedings, meaning that the court does not finally determine the validity of the movant's claim. Veal v. American Home Mortgage Servicing, Inc., (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

On one hand, the court is not determining whether the foreclosure sale was valid and who has rightful interest in the property. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001. On the other hand, however, the movant has established a colorable claim to enforce a right against the property. This is cause for the granting of relief from stay as to both the debtor and the estate.

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

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

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

14. 12-22589-A-7 BONIFACIO/GLORIA CUNANAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1 — 7-19-13 [35]
EAST WEST BANK 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 in part and dismissed as moot in part.

The movant, East West Bank, seeks relief from the automatic stay as to a real property in San Jose, California.

Given the entry of the debtor's discharge on May 24, 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 trustee filed a report of no distribution on July 15, 2013. This is cause for the granting of relief from stay as to the estate.

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

The 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 motion does not establish value for the property, the movant has not established that the value of its collateral exceeds the amount of its secured claim. Hence, 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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

15. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-4
VS. HANSON BROTHERS ENTERPRISES, ET AL — 6-18-13 [63]

Tentative Ruling: The motion will be denied without prejudice.

The debtors are asking the court to avoid the judicial liens as to the following entities:

- Hanson Brothers Enterprises,
- Northern California Collection Service,
- MGM Investigations & Collections,
- Operating Engineers Health & Welfare Trust Fund,
- Muniquip, dba Ditch Witch Equipment Co, Inc.,
- A & A Ready Mixed Concrete, Inc.,
- Nixon-Egli Equipment Co. of Southern California, Inc.,
- Pension Trust Fund for Operating Engineers, et al., and
- RTH Contracting, Inc.

The motion will be denied without prejudice for several reasons. First, the court cannot find evidence that Operating Engineers Health & Welfare Trust Fund has been served with the motion. The court cannot find reference to Operating Engineers Health & Welfare Trust Fund in the proof of service for the motion. Docket 67.

Second, the abstract of judgment exhibit referenced for RTH Contracting, Exhibit N, does not reflect a judgment in favor of RTH. It reflects a judgment

in favor of Rishi Prasad, et al.

Third, the judgments in favor of "Operating Engineers Health & Welfare Trust Fund, et al.," in favor of "Muniquip, Inc., et al.," and in favor of "Pension Trust Fund for Operating Engineers, et al." involve other holders of those judgments. The judgments were in favor of those entities and others not identified in the motion. The court will not avoid the liens held by these entities until the other plaintiffs holding the same judgments are identified and served with this motion.

16. 13-25497-A-7 ESMAEL SHAHGHADAMI AND MARIZA KALBASI — MOTION FOR RELIEF FROM AUTOMATIC STAY
KMR-1 — 7-5-13 [24]
RESIDENTIAL FUNDING COMPANY, LLC VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, Residential Funding Company, seeks relief from the automatic stay as to a real property in Granite Bay, California.

Given the entry of the debtor's discharge on July 24, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c)(2)(C). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the court ordered abandonment of the property on June 27, 2013. Docket 23. Hence, the automatic stay has expired as to the estate and any interest the estate may have in the property. See 11 U.S.C. § 362(c)(1). The motion will be dismissed as moot in its entirety.

17. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO EXTEND DEADLINE
HSM-3 — 7-2-13 [56]

Tentative Ruling: The motion will be granted.

The trustee requests a 62-day extension, from July 2, 2013 to September 2, 2013, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because she needs additional time to investigate the debtors' financial affairs, including transfers by the debtors of real property pre-petition.

The debtors oppose the motion, contending that they did not intend to hide assets when they transferred two real properties pre-petition. Also, the properties purportedly had no equity when they were transferred.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was July 2, 2013, pursuant to a stipulation between the debtors and the trustee. Docket 30. This motion was filed on July 2, 2013. Thus, the motion complies with the temporal requirements of the rule.

The court is willing to allow another extension of the deadline for filing objections to discharge. The trustee needs this additional time to investigate the transfers further and determine whether litigation would be required for the recovery of the transfers. The debtors have indicated an willingness to cooperate with the trustee in the recovery of the transfers or their value, but

the trustee is still not certain of their intent to cooperate. This is cause for the granting of the extension. The motion will be granted and the deadline will be extended to September 2. The court is making no determination about the merits of the pre-petition transfers.

FINAL RULINGS BEGIN HERE

18. 12-36506-A-7 STEPHEN/MICHELLE RILEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 7-5-13 [45]
GREEN TREE SERVICING, LLC VS.

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

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

The movant, Green Tree Servicing, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on March 5, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $163,485 and it is encumbered by claims totaling approximately $228,255. The movant's deed is in first priority position and secures a claim of approximately $175,410.

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) is not 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.

19. 13-28108-A-7 VERONICA JAVA — MOTION FOR RELIEF FROM AUTOMATIC STAY
RGJ-1 — 7-9-13 [9]
SOUTHERN CA POSTAL CREDIT UNION VS.

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

20. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
JGL-1 — 7-12-13 [508]
FIDELITY AND DEPOSIT CO. OF MARYLAND VS.

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

The motion will be granted.

The movants, FLINTCO, Inc., FLINTCO LLC, FLINTCO Pacific, Inc., and Fidelity and Deposit Company of Maryland & Federal Insurance Company, seek relief from the automatic stay to proceed in state court with their indemnification construction defect claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movants would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent their claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movants to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movants are not over-secured creditors. See 11 U.S.C. § 506.

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

21. 13-24630-A-7 LOUON SISON
JAB-1
EAGLE CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-16-13 [12]

Final Ruling: The movant has provided only 27 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.

22. 12-30940-A-7 DONALD/LEE WARYE
BHS-3

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $5,697.50, EXP. $34.43)
7-10-13 [66]

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 Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,697.50 in fees and $34.43 in expenses, for a total of $5,731.93. This motion covers the period from September 20, 2012 through July 10, 2013. The court approved the movant's employment as the trustee's attorney on October 19, 2012. In performing its services, the movant charged an hourly rate of $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) assisting the estate with the recovery of excess contributions by the debtors to a retirement account, (3) assessing the administration of undervalued assets and the recovery of nonexempt equity from assets, (4) negotiating with the debtors

about resolution of the trustee's claims, and (5) preparing and filing employment and compensation motions.

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

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

23. 13-27040-A-7 ANNE SIEGFRIED — MOTION TO RECONSIDER
MDM-1 — 7-12-13 [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 debtor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 is asking the court to reconsider its May 27, 2013 order granting waiver of the filing fee because the debtor's bank statements from February until May 2013 reflect an average net monthly income of $2,174.71 (reflecting deposits), rather than the monthly income of $650 represented by the debtor in her application for waiver of the filing fee. Dockets 5, 11, 18, 19. This case was filed on May 23, 2013.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for: (1) mistake, inadvertence, surprise, or excusable neglect; "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the [order]."

Waiver of the filing fee is allowed only when the debtor's income is less than 150% of the poverty guidelines last published by the U.S. Department of Health and Human Services. 28 U.S.C. § 1930(f)(1).

The debtor lives in a household of one person with a monthly gross income of approximately $2,174. See Schedule I. The 2013 poverty guidelines annual income for a household of one person is $11,490. 150% of that amount is $17,235 or $1,436.25 a month. The court concludes then that the debtor was not eligible for a waiver of the filing fee. The debtor's income was not less than 150% of the poverty guidelines last published by the U.S. Department of Health and Human Services. 28 U.S.C. § 1930(f)(1). Accordingly, the motion will be

granted under Rule 60(b)(1) and (3) for mistake and misrepresentation by the debtor of her income. The court will vacate its order granting the waiver. The debtor shall have until August 19, 2013 to pay the filing fee.

24. 13-26641-A-7 OLA JOSEPH — MOTION TO CONVERT CASE 7-29-13 [15]
JCK-2

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days' notice of the hearing on a compensation motion. Here, the movant has given only 14 days' notice of the hearing on this motion. The motion papers were served on July 29, 2013. Docket 18.

25. 12-40646-A-7 KULWANT MAHI — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-12-13 [32]
PD-1
THE GOLDEN 1 CREDIT UNION VS.

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

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

The movant, The Golden One Credit Union, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on March 5, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $115,000 and it is encumbered by claims totaling approximately $244,235. The movant's deed is the only encumbrance against the property.

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

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

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) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

26. 13-26846-A-7 CHERYL BLISS — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 7-8-13 [13]
JPMORGAN CHASE BANK, N.A. VS.

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

The motion will be granted.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Galt, California. The property has a value of $252,000 and it is encumbered by claims totaling approximately $363,936. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

27. 13-26551-A-7 MICHAEL HOLT — MOTION TO EMPLOY
SLF-5 — 7-8-13 [45]

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

The motion will be granted.

The trustee requests approval to employ Bob Brazeal of PMZ Real Estate as a real estate broker for the estate. Mr. Brazeal will assist the estate with the valuing, marketing and sale of a real property in Ripon, California. The proposed compensation for Mr. Brazeal is a six percent (6%) commission of the gross sales price.

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

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

28. 13-26551-A-7 MICHAEL HOLT — MOTION TO EXTEND TIME
SLF-6 — 7-8-13 [55]

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

The motion will be granted.

The trustee moves for a 62-day extension, from July 9, 2013 to September 9,

2013, of the time to assume or reject the debtor's executory contracts or unexpired leases, as the trustee needs additional time to review and assess the merits of the debtor's executory contracts. Schedule G lists two executory contracts / unexpired leases.

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

The Ninth Circuit's interpretation of the language "or within such additional time as the court, for cause, within such 60-day period, fixes," is that "the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period) [and] there is no express limit on when the bankruptcy court must hear and decide the motion." Southwest Aircraft Services, Inc. v. City of Long Beach (In re Southwest Aircraft Services, Inc.), 831 F.2d 848, 850 (9th Cir. 1987) (addressing the identical language in pre-BAPCPA 11 U.S.C. § 365(d)(4)); see also Glimidakis v. Any Mountain, Ltd (In re Any Mountain, Ltd), Case Nos. NC-06-1006-JBS, 04-12989, 2006 WL 6810944 at *3-4 (B.A.P. 9th Cir. Nov. 3, 2006) (citing Southwest with approval).

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

This petition was filed on May 10, 2013. The last day of the 60-day deadline under 11 U.S.C. § 365(d)(1) expired on July 9, 2013. As the motion was filed on July 8, 2013, it is timely under 11 U.S.C. § 365(d)(1). Given that the trustee needs additional time to assess the estate's interest in the executory contracts, the court concludes that there is cause for the granting of the requested extension. The motion will be granted.

29. 13-25453-A-7 DAVID ADEMA — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 7-15-13 [16]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

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

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

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

Given the entry of the debtor's discharge on July 30, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $321,000 and it is encumbered by claims totaling approximately $563,647. The movant's deed is in first priority position and secures a claim of approximately $523,073.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 22, 2013.

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

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

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) is not 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.

30. 13-21157-A-7 KEVIN/JENNIFER PERRINE — MOTION TO APPROVE COMPENSATION OF AUCTIONEER (FEES $1,995.50, EXP. $1,623.60) 7-15-13 [34]
KJH-2

Final Ruling: The motion will be dismissed without prejudice because the proof of service for the notice of hearing is missing a referenced attachment that includes the "service list." Docket 37. Hence, the court does not have

evidence that the notice of hearing was served on anyone.

31. 11-48462-A-7 RITA PARSONS — MOTION TO APPROVE COMPROMISE
MPD-2 — 7-12-13 [43]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor, resolving the estate's interest in nonexempt insurance contract residual payments. The debtor is entitled to such payments for pre-petition work as a self-employed insurance agent. The parties had settled originally the estate's interest in the payments for $12,000, payable at $500 a month for two years. The debtor made only $6,000 in payments, however, triggering renewed negotiations, accounting of nonexempt payments received, and this settlement.

Under the terms of this compromise, the debtor will pay $42,000 to the estate in full satisfaction of the estate's interest in the future nonexempt payments. This settlement figure takes into account the $6,000 the debtor paid already on account of the prior settlement agreement, takes into account $2,000 in additional payments, and adds a promissory note for $34,000 at 0% interest, secured by the debtor's unencumbered residence.

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 inherent costs, risks, delay and inconvenience of further litigation, given that the promissory note is secured by an unencumbered real property, and given that the settlement amount represents 78% of filed proofs of claim, 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. 12-33467-A-7 RONALD DUNCAN — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $16,020, EXP. $33.20) 7-15-13 [108]
LR-6

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Docket 116. 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.

33. 12-33467-A-7 RONALD DUNCAN — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-3-13 [101]
MBB-1
U.S. BANK, N.A. VS.

Final Ruling: This motion has been voluntarily dismissed by the moving party. Docket 118.

34. 13-22569-A-7 BARRY/MELODY VAUGHTER — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-2-13 [24]
MDE-1
BANK OF THE WEST VS.

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

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

The movant, Bank of the West, seeks relief from the automatic stay as to a real property in Suisun City, California.

Given the entry of the debtor's discharge on June 10, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $185,000 and it is encumbered by claims totaling approximately $282,764. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can

administer it for the benefit of creditors.

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

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) is not 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.

35. 12-40090-A-7 FREDRICK HODGSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
LDH-1 — 7-3-13 [182]
FIDELITY NATIONAL TITLE COMPANY VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on July 14, 2013, dissolving the stay. 11 U.S.C. § 362(c)(2)(B). And, the movant is not seeking retroactive relief from stay or relief under 11 U.S.C. § 362(d)(4).

36. 11-35193-A-7 J/MARIA CARDENAS — MOTION FOR TURNOVER OF PROPERTY
SLF-13 — 7-5-13 [100]

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

The motion will be granted.

The trustee is asking the court to direct the debtors to turn over possession to him of their real property in Oakland, California.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the

estate to turn over such property to the estate "and account for, such property or the value of such property."

Although they have exempted $19,290 in the property (pursuant to Cal. Civ. Proc. Code § 703.140(b)(5)), the debtors do not reside at the property. Docket 80. And, the debtors have a history of failing to cooperate with the trustee in the sale of the property. Despite repeated requests from the trustee for the value and liens on the property, the debtors have been non-responsive. More, the debtors have unsuccessfully attempted to convert the case to chapter 13 five times. In denying the debtors' third conversion motion, this court concluded that "the debtors' conduct is marked by indicia of bad faith." Docket 66. The above convinces the court that the debtors are not cooperating with the trustee in the administration of the property. Hence, the court will order the debtors to turn over possession of the property to the estate. The motion will be granted.

37. 09-21797-A-7 CONNECT 2 WIRELESS INC. MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $5,035.50) 7-25-13 [146]
SLC-4

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(a)(6), which requires at least 21 days' notice of the hearing on a compensation motion. Here, the movant has given only 18 days' notice of the hearing on this motion. The motion papers were served on July 25, 2013. Docket 150.