UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 23, 2013 at 10:00 a.m.

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

3, 4, 7, 12, 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 OCTOBER 21, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 7, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 14, 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. 09-36302-A-7 MYRA JACKSON
JRR-1

MOTION TO APPROVE COMPROMISE, APPROVE COMPENSATION FOR OTHER PROFESSIONALS (FEES $28,000) AND TO PAY DEBTOR
8-22-13 [28]

Tentative Ruling: The motion will be granted in part.

The trustee requests approval of two settlement agreements. The first settlement is between the estate and an unidentified pharmaceutical manufacturer, resolving the debtor's claims against the manufacturer for injury she sustained in 2002.

This case was filed on August 1, 2009. After the debtor received a discharge on November 16, 2009, the case was closed on November 20, 2009 without the administration of any assets. Although the debtor was aware of the injury at the time of bankruptcy, she did not become aware of her claim against the manufacturer until April 2012. She retained counsel, the Lee Murphy Law Firm and Clark Love & Hutson, on a 40% contingence fee basis and eventually settled the claim without the trustee's involvement, for $70,000. After the settlement was reached, the trustee learned of it and reopened this case to administer the settlement proceeds for the benefit of creditors. The debtor asserted an exemption claim in the settlement proceeds, but the trustee pointed out that he would object to the exemption because the claim against the manufacturer was not disclosed in the original schedules.

As a result, the trustee and the debtor entered into a settlement agreement, *i.e.*, the second settlement, resolving the estate's objection to the debtor's exemption claim in the settlement proceeds. Under this settlement agreement, the debtor will receive 40% and the estate will receive 60% of the net settlement proceeds. This translates into the debtor receiving $16,152.11 and the estate receiving $24,228.17, after the debtor's attorneys receive their 40% contingency fee ($28,000) and reimbursement for $1,619.72 of expenses.

The trustee asks for approval of the settlement agreement with the manufacturer and of the settlement agreement with the debtor. The trustee also asks for the court to approve the compensation of the attorneys who represented the debtor and, unbeknownst, represented the estate in the litigation against the manufacturer.

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 with the manufacturer. That is, given that the debtor was represented by counsel in the litigation against the manufacturer, given that

the trustee has reviewed the settlement and agrees that it is reasonable, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement with the manufacturer is equitable and fair.

The court concludes that the Woodson factors balance in favor of approving the compromise with the debtor as well. That is, given that the debtor was not aware of her claims against the manufacturer until after this case was closed and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement with the debtor resolving her exemption claim is equitable and fair.

Therefore, the court concludes the settlements 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.

However, the court cannot approve the compensation of the attorneys who represented the debtor and the estate in the litigation against the manufacturer. As to the debtor's interest, court approval is unnecessary. As to the representation of the estate's interest, prior bankruptcy court approval must be obtained for a professional's employment if that professional is to be compensated from the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). If prior approval is not obtained, the professional may seek retroactive approval of his or her employment by satisfying a two-prong standard. The professional must provide: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. Id. In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Id.; see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment and citing In re Twinton Properties Partnership, 27 B.R. 817, 819-20 (Bankr. M.D. Tenn. 1983)).

The court did not give prior approval for counsel's employment and the above showing has not been made. This aspect of the motion will be denied without prejudice.

2. 13-28204-A-7 MADELIN DRUSE — TRUSTEE'S MOTION TO DISMISS
8-29-13 [45]

Tentative Ruling: The motion will be denied.

The trustee moves for dismissal because the debtor did not attend the second continued meeting of creditors held on August 28, 2013.

The debtor responds that she did not attend the August 28 meeting because she had attended the two prior meetings on July 24 and July 31, the trustee had requested documents which she produced on August 6, and she had believed that the continuance of the meeting to August 28 was only for her to produce the requested documents.

As the meeting of creditors was continued to August 28 solely for the debtor to produce documents to the trustee, and such documents were produced on August 6, the motion will be denied.

The motion will be denied also because a trustee should not continue a meeting of creditors for the sole purpose of obtaining documents from the debtor. If the debtor has failed to produce statutorily-required documents, the trustee may file a motion to dismiss on that basis. See 11 U.S.C. §§ 521(e)(2)(A)&(B) and 707(a)(1). And, if the trustee desires to obtain other documents from the debtor, the Rule 2004 procedure is available for that purpose. The motion will be denied and the case shall remain pending.

3.	13-29207-A-7 BRADLEY DEMUCHA MRG-1 CAPITAL ONE AUTO FINANCE VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-23-13 [13]

Tentative Ruling: The motion will be dismissed as moot.

The movant, Capital One Auto Finance, seeks relief from the automatic stay with respect to a 2008 Dodge Caravan 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 July 11, 2013 and a meeting of creditors was first convened on August 15, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than August 10. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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 and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no 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 September 14, 2013, 30 days after the initial meeting of creditors.

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

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on August 15, 2013, indicating an intent not to administer the vehicle or any other assets.

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

4. 13-25011-A-7 NANCY LIBBY — MOTION FOR WAIVER OF CREDIT COUNSELING REQUIREMENT
7-3-13 [22]

Tentative Ruling: The motion will be granted.

The debtor asks the court to waive the credit counseling requirements of 11 U.S.C. § 109(h)(1) pursuant to 11 U.S.C. § 109(h)(4). The debtor claims to have incapacity and disability as prescribed by 11 U.S.C. § 109(h)(4).

11 U.S.C. § 109(h)(1) and (4) provides that:

"(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111 (a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

. . .

"(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of *incapacity*, *disability*, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in

an in person, telephone, or Internet briefing required under paragraph (1)."

The debtor asserts that "after 2 [military] deployments], she is "suffering from extreme problems associated with two severe head injuries, and also PTSD." The motion will be granted.

5. 13-31013-A-7 BRANDON/VALERIE NORTON — ORDER TO SHOW CAUSE 8-23-13 [10]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. This is cause for dismissal. See 11 U.S.C. § 707(a)(2). The court also notes that the court denied the debtors' motion for waiver of the filing fee on August 23, 2013. Docket 9.

6. 13-27715-A-7 CALIFORMACY INC. — MOTION TO SELL O.S.T. 9-10-13 [68]
WFH-3

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $95,000 (plus the fair market value of the prescription inventory that remains on the premises within two business days after closing of the sale, up to $165,000), free and clear of liens, the estate's interest in the prescription inventory, prescriptions, prescription files, customer lists and patient profiles, trade names, and books and records to Walgreens Co. The $95,000 purchase price applies to all assets less the prescription inventory, whose value will be determined by a third-party within two business days after closing of the sale.

The estate's pharmacy business is being operated by the trustee pursuant to an order of the court.

The agreement between the parties also provides for a $30,000 retention bonus to the estate, if the volume of prescriptions averages 50 a week for 11 months following closing of the sale. Also, Walgreens is entitled to claw back 25% of the purchase price (or a maximum of $31,250 per the motion) in the event a new pharmacy opens within 12 months of closing, at the space currently occupied by the estate's pharmacy business.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for a good faith determination under 11 U.S.C. § 363(m).

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

The trustee has identified four creditors claiming security interests in the assets being sold, including, UPS Capital Business Credit, Cardinal Health,

Bank of the West, and Harvard Drug Group. UPS and Cardinal have agreed to the sale and the trustee expects Bank of the West to consent by the time of the hearing. As to the Harvard Drug, the trustee says that although it has filed a secured proof of claim for $4,154.68 (POC 3), that claim will be superseded by a motion for an administrative expense claim based on 11 U.S.C. § 503(b)(9), for providing drugs to the debtor within 45 days prior to the petition date.

The sale will generate some proceeds for distribution to the unsecured creditors of the estate, as the trustee has negotiated a pro-rata distribution from the sale proceeds to all creditors of the estate, including both the secured and unsecured creditors.

Provided the trustee obtains the consent for the sale of Bank of the West and Harvard Drug, the court will approve the sale free and clear of all four liens or interests in the assets being sold, pursuant to 11 U.S.C. § 363(b) and (f)(2). The motion does not offer any other basis for approving the sale free and clear of all four liens or interests.

The court will waive the 14-day period of Rule 6004(h) and will make a good faith determination under 11 U.S.C. § 363(m). The motion will be conditionally granted.

One final note, the court needs clarification on the $31,250 figure for the 25% claw back provision in the agreement. $31,250 is 25% of $125,000, but that figure is not in the motion.

7. 13-28325-A-7 WALTER/JOAN ARMSTRONG — MOTION FOR RELIEF FROM AUTOMATIC STAY
NFS-1 — 9-6-13 [24]
GREENTREE SERVICING L.L.C. 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, Green Tree Servicing, seeks relief from the automatic stay as to real property in Galt, California. The property has a value of $261,975 and it is encumbered by claims totaling approximately $538,665. The movant's deed is in first priority position and secures a claim of approximately $411,900.

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 July 18, 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.

8. 12-41228-A-7 KEITH THOMPSON — OBJECTION TO EXEMPTIONS 6-11-13 [61]

Tentative Ruling: The objection (although phrased as an opposition) to the debtor's exemption will be sustained.

The Board of Trustees for California State University objects to the debtor's exemption in his pending workplace discrimination state court litigation against CSU, based on his concealment of it in the bankruptcy case. The trustee supports the objection.

The debtor opposes the objection, contending that CSU does not have standing to object to the debtor's exemptions and disputing the bad faith contentions and inability to claim an exemption pursuant to Cal. Civ. Proc. Code § 704.140(b).

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

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

The objection is timely as it was filed within 30 days of the last amendment of Schedules B and C on May 17, 2013. Docket 55. This objection was filed on June 11.

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

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

A claim of exemption is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re

Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

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

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

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

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

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

Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold at 786.

The concealment of assets, though, is sufficient to constitute bad faith. Arnold at 785-86; Rolland at 415.

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

The court rejects the debtor's contention that CSU does not have standing to file the instant objection. CSU has filed a proof of claim in this case. The

proof of claim is for pre-petition attorney's fees CSU would be entitled to in the event it prevails in the state court litigation against the debtor. Such proof of claim is valid unless it has been objected to successfully. 11 U.S.C. § 502(a). Yet, no one has objected to CSU's proof of claim and the court will not permit the debtor to stage a collateral attack on the claim in this objection. Thus, for purposes of this objection, CSU has standing to seek the disallowance of the exemption.

Turning to the merits of the objection, the court will sustain the objection because the exemption cannot be claimed under Cal. Civ. Proc. Code § 704.140(b).

Cal. Civ. Proc. Code § 704.140(b)-(d) provides that:

"(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law)."

The debtor asserts that Cal. Civ. Proc. Code § 704.140(b) is the proper exemption for the litigation because the debtor is seeking emotional distress damages from CSU. However, emotional distress damages do not qualify for an exemption under the statute because it requires the damages arise "out of personal injury." The statute does not focus on the nature of the damages but on the type of injury causing damages. Here, the damages the debtor is seeking against CSU, whatever they may be, resulted from alleged workplace discrimination against the debtor, based on his religious views. Hence, the court will sustain the objection to the exemption, as Cal. Civ. Proc. Code § 704.140(b) does not allow it.

Turning to bad faith, the debtor filed the pre-petition state court action for wrongful discharge against CSU on July 31, 2012. The debtor filed this case with the assistance of counsel on December 10, 2012, as a chapter 13 proceeding. The bankruptcy schedules, statements and chapter 13 plan were not filed by the debtor until December 24, 2012. The debtor did not list any interest in the subject litigation in Schedule B. Docket 13. The debtor also did not list any interest in the litigation against CSU in response to question 4 in the statement of financial affairs. Docket 13.

However, it is clear from the debtor's response to question 4 in the statement of financial affairs that he discussed pending litigation with his bankruptcy attorney, as the debtor listed a pending state court complaint against himself by Ford Motor Credit Company.

The debtor filed also a chapter 13 plan on December 24, 2012, proposing to pay only a 2% dividend to general unsecured creditors. Docket 11. The plan makes no mention of the pending litigation against CSU either. Docket 11.

The debtor did not prosecute the plan to confirmation. No hearing on confirmation was ever set by the debtor. Instead, the debtor converted the case to chapter 7 on January 16, 2013. The chapter 7 trustee examined the debtor at the meeting of creditors and issued a report of no distribution on March 12, 2013. The debtor received his discharge on May 7, 2013 and was only then that CSU learned of the debtor's bankruptcy case.

On May 10, 2013, CSU told the debtor's state court counsel of the bankruptcy case and informed him that CSU would be filing a motion for judgment on the pleadings if the debtor did not dismiss the claims. This, in turn, led to the debtor filing a motion to delay the bankruptcy discharge, on May 13, 2013. That motion was never set for a hearing.

The instant objection was filed on June 11 and the trustee withdrew his report of no distribution on June 19. The trustee issued a notice of assets on June 19.

The court is persuaded that the debtor's failure to disclose his pending state court claims against CSU amounts to bad faith.

First, CSU has produced sufficient evidence to rebut the presumptive validity of the exemption. That evidence is the numerous opportunities the debtor had to disclose the pending claims and his failure to do so.

On the other hand, the debtor has presented no evidence, whatsoever, with his opposition to the objection. His opposition is not supported by a declaration or an affidavit establishing the factual assertions in the oppositions, including his denials of bad faith. The debtor then has not carried his burden of production to establish the validity of the exemption.

Second, the court is persuaded that CSU has carried its ultimate burden of persuasion in establishing that the exemption is improper.

From the facts outlined above, the court infers that the debtor intended to conceal the claims against CSU. The debtor had retained counsel to represent him in the suit against CSU and he was actively pursuing those claims when he filed his bankruptcy petition. The court cannot accept that the debtor simply forgot about his claims against CSU. He obviously was asked by his bankruptcy counsel about pending litigation in order to answer and complete Schedule B and the statement of financial affairs. This is evidenced by the fact that the debtor listed another pending litigation in item 4 of the statement of financial affairs, "Ford Motor Credit Company vs. Keith L. Thompson." It shows that the debtor had actively thought about what pending litigation he was involved in, yet he did not disclose the claims against CSU.

If it was not for CSU to alert the debtor's state court counsel about the bankruptcy. The court is unconvinced that the debtor would have disclosed the claims against CSU if CSU had not come forward. The debtor's contention that the he "took several steps to correct his inadvertent failure to disclose the lawsuit" is not credible because those steps were made only after CSU had learned of the concealment and had threatened to seek dismissal of the state court claims. CSU contacted the debtor's state court counsel about the concealment on May 10, whereas the debtor did not file a motion to delay the discharge in the bankruptcy case until May 13. Docket 74 at 5; Docket 62 ¶ 3; Docket 54.

Third, in concluding that the exemption is asserted in bad faith, the court is

not saying that the debtor was late in claiming the exemption, as the debtor is arguing. Rather, the court is saying that the debtor's exemption is improper because he was late in disclosing his interest in the claims, which amounts to concealment.

Fourth, even if the debtor's concealment of the claims did not involve fraudulent intent, malice, ill will or an affirmative attempt to violate the law, such factors are not required for a finding of bad faith. Leavitt at 1224-25.

Finally, the court disagrees with the debtor that no one has been prejudiced by the tardy disclosure of the claims. This case was filed on December 10, 2012, while the debtor did not disclose the pending claims until May 17, 2013. The delay in disclosing the claims has deprived the estate from timely considering its interest in the claims and managing its interest in the litigation. The trustee should have had the opportunity to make decisions in the litigation immediately after realizing that the estate has some interest in it. The objection will be sustained.

9. 10-20029-A-7 BUALAI WHITE — MOTION TO SELL
DNL-4 — 8-26-13 [190]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $40,000, the estate's interest in real property in Sacramento, California to Tim Terry, free and clear of the liens and interests of the IRS. The sale is as is and without any warranties or representations. The trustee also asks for approval of the payment of the real estate broker's $4,500 commission and for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

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

The IRS held tax liens secured by the property in the aggregate amount of $153,607.44. Those liens have been partially satisfied from a prior sale of real property by the trustee. In connection with the prior sale, the IRS also agreed to withdraw all proofs of claim against the estate and to "irrevocably consent to the voluntary sale, pursuant to 11 U.S.C. § 363(f)(2), of all real and personal property of the estate and waive any claim to the proceeds of such property." Motion at 3.

In addition to the now released IRS lien, the property was also subject to a deed of trust securing a $15,000 claim in favor of Gordon and Pauline Chastain and Allan and Joan Clark. However, the trustee has discovered that the claim has been satisfied pre-petition and she is awaiting a reconveyance of the deed.

The court also notes that the property is subject to an exemption claim in the amount of $20,725. The address of the property in the schedules (192 Harris Avenue Sacramento, California) is different from the address identified by the

trustee (0000 Harris Avenue Sacramento, California).

The sale will generate some proceeds for distribution to creditors of the estate. Hence, it will be approved pursuant to 11 U.S.C. § 363(b).

The court does not have to approve the sale free and clear of the IRS lien, as there is no longer such a lien, given the trustee's prior agreement with the IRS.

The court will approve the payment of the real estate commissions to Lyon Real Estate subject to the employment terms approved by the court in its order entered on March 19, 2013. Docket 161. And, the court will waive the 14-day period of Rule 6004(h).

10. 10-20029-A-7 BUALAI WHITE — MOTION TO SELL
DNL-7 — 8-26-13 [196]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $65,900, the estate's interest in real property in Gridley, California to Hui-Tung, free and clear of the liens and interests of the IRS. The property is unimproved vacant land. The sale is as is and without any warranties or representations. The trustee also asks for approval of the payment of the real estate broker's $6,500 commission ($3,534.50 to the trustee's broker and $2,965.50 to the buyer's broker) and for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

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

The IRS held tax liens secured by the property in the aggregate amount of $153,607.44. Those liens have been partially satisfied from a prior sale of real property by the trustee. In connection with the prior sale, the IRS also agreed to withdraw all proofs of claim against the estate and to "irrevocably consent to the voluntary sale, pursuant to 11 U.S.C. § 363(f)(2), of all real and personal property of the estate and waive any claim to the proceeds of such property." Motion at 3.

The property is not subject to an exemption claim. The address of the property in the schedules (Helens Lane Oroville, California) is different from the address identified by the trustee (56 Helens Lane Gridley, California).

The sale will generate some proceeds for distribution to creditors of the estate. Hence, it will be approved pursuant to 11 U.S.C. § 363(b).

The court does not have to approve the sale free and clear of the IRS lien, as there is no longer such a lien, given the trustee's prior agreement with the IRS.

The court will approve the payment of the real estate commissions to Lyon Real

Estate and the buyer's broker, subject to the employment terms approved by the court in its order entered on March 19, 2013. Docket 161. And, the court will waive the 14-day period of Rule 6004(h).

11.	09-43132-A-7 TSAR	OBJECTION TO
	CDH-5	CLAIM
	VS. LISA TAYLOR	8-5-13 [93]

Tentative Ruling: The objection will be stayed pending resolution of the wrongful discharge claims in the state court action.

The trustee in this case objects to two proofs of claim by Lisa Taylor (claims 1 and 2), who is in her own chapter 7 bankruptcy case. Claim 2 asserts a general unsecured claim for $2,385,520 and a priority unsecured claim for $10,950. The claim, in its entirety, is based on six causes of action asserted by Ms. Taylor against the debtor, including:

(1) A claim for race discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act;

(2) A claim for the debtor failing to prevent discrimination under FEHA;

(3) A claim for wage and hour violations under the California Labor Code;

(4) A claim for wrongful termination under California law;

(5) A claim for intentional infliction of emotional distress; and

(6) A claim for negligent infliction of emotional distress.

The trustee in Ms. Taylor's bankruptcy case opposes the objection.

This objection to claim cannot be adjudicated absent an evidentiary hearing, as there are numerous disputed material factual issues, including, without limitation, whether the debtor discriminated against Ms. Taylor as to her compensation, terms, conditions, or privileges of employment; whether Ms. Taylor's direct supervisors, Maxine and Jacob Ritchey, left the debtor because they were removed or because they resigned voluntarily; whether Ms. Taylor was improperly classified as an exempt employee for much of her employment with the debtor; whether Ms. Taylor's discharge from the debtor was retaliatory, a discrimination or otherwise unlawful.

However, the court will abstain from adjudicating the claims asserted by Ms. Taylor.

28 U.S.C. § 1334(c)(1) provides that "[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." This is discretionary abstention.

In the Ninth Circuit, the factors that a court must consider when deciding whether to apply discretionary abstention include: (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other

nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties. Christensen v. Tuscon Estates, Inc. (In re Tuscon Estate, Inc.), 912 F.2d 1162, 1166-67 (9th Cir. 1990).

Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding").

The causes of action upon which the subject proofs of claim are based, are the subject of a pending state court litigation, involving non-debtor parties. Proof of claim 1 attaches the first page of a state court complaint filed by Ms. Taylor against the debtor in this case and against at least four other persons, who are not parties to this bankruptcy case, including "Jacob Richey, Maxine Richey, Nancy Allardyce, Does 1-10." The complaint was filed with the state court sometime before December 10, 2009, when POC 1 was filed with this court.

Further, none of the claims involve bankruptcy law. The claims are predominantly anchored in California employment law. Also, aside from liquidating the proof of claim of Ms. Taylor's bankruptcy estate in this case, the adjudication of the claims has no impact on the administration of this bankruptcy estate. The court rejects the contention that this court may adjudicate the claims more speedily than the state court. This court does not deal with California employment law on regular basis, which is likely to dispense with the application of alternate-direct testimony and prolong both pre-trial litigation and trial time. In any event, the court expects trial of the claims to take significantly more than the typical one-to-two day trials this court is accustomed and able to handle. And, scheduling more than a two-day trial before this court requires at least six-month advance notice at this time. In short, the nature of the claims would be a burden on this court's docket.

Additionally, the instant trustee has had sufficient time to have the claims adjudicated, anywhere, in the last 20 months. This bankruptcy case was filed on October 25, 2009, nearly four years ago, and the trustee issued a notice of assets on December 21, 2009. The latter of Ms. Taylor's two proofs of claim was filed on December 29, 2009, about three months short of four years ago. The state court litigation was filed prior to December 10, 2009, when Ms. Taylor's first proof of claim was filed. Ms. Taylor filed her own bankruptcy case on January 27, 2012 - about 20 months ago - and the trustee in her case adjourned the meeting of creditors on March 7, 2012, nearly 19 months ago. This estate, however, did not seek approval for the employment of special counsel to defend Ms. Taylor's claims until June 3, 2013. Docket 65.

Given the foregoing, this court will abstain from adjudicating the causes of action asserted by Ms. Taylor against the debtor in this case. Once the claims have been adjudicated in the state court action, the trustee in this case may re-notice this objection for hearing, so the court can enter an order allowing

the proof of claim of Ms. Taylor's bankruptcy estate in accordance with the outcome of the state court action.

12. 13-30635-A-7 MARCIN/ALICE JEZ — MOTION TO COMPEL ABANDONMENT
CRW-1 — 8-26-13 [12]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their trucking driving business assets.

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 assets include a 2000 Freightliner truck ($9,000 scheduled value), a 1995 Transcraft flatbed trailer ($5,000 scheduled value), and some business equipment ($300 scheduled value), as listed in Schedule B. The assets have an aggregate value of $14,300 and have been claimed fully exempt in Schedule C. Given the exemption claims, 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.

13. 13-26437-A-7 PACIFIC CREST DOOR CO, INC. — MOTION TO SELL
DMW-3 — 8-23-13 [25]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and where is for $33,000 the estate's unencumbered interest in bulk personal property items located at the debtor's place of business in Grass Valley, California to Joshua Ramey. The buyer is one of the owners of the real property where the assets being sold are located.

In addition to the purchase price, the buyer is waiving approximately $7,000 in storage fees owed by the estate. Thus, the total purchase price for the proposed sale is $40,000 ($33,000 + $7,000).

The property being sold includes tools, weathered lumber, older vehicles, and "items" used in the fabrication of doors and lumber. The debtor operated a door manufacturing company and a mill. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

14. 12-36347-A-7 PA-9 — ARNOLD THREETS AND TESSA BANUELOS-THREETS — MOTION TO ABANDON 8-9-13 [120]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee asks for the court to order the abandonment of the estate's interest in an appeal from Contra Costa County Superior before the First District California Court of Appeal. The dispute in that litigation is between Debtor Arnold Threets and the City of Richmond. The dispute arises from discrimination claim(s) asserted against the City by some persons, including Mr. Threets. A judgment was entered against Mr. Threets in favor of the City in the state court action, along with an order for Mr. Threets to pay the litigation costs of the City. It is the appeal from that judgment and order that the trustee wishes to abandon.

There is a separate federal district court action containing discrimination claims by Mr. Threets against the City, pending in the Northern District of California. The trustee is not seeking to abandon that action.

The debtors filed this case on September 7, 2012. The City filed a proof of claim against this estate for $458,551.33 on January 2, 2013. The bankruptcy trustee has been attempting to administer both the appeal and the federal court action.

The City objects to the abandonment of the appeal, arguing that it has some value to the estate. The City claims that it has offered an unspecified sum to the trustee to settle both the appeal and the federal court action. The City disputes that the estate's special counsel in the federal court action, Wilcoxen Callaham, does not represent Mr. Threets in the state court appeal. The City contends that the estate is represented by Mr. Callaham in the appeal as he has been negotiating with the City with respect to both the federal action and the appeal.

The trustee replies that he is not represented by Mr. Callaham in the appeal and reaffirms that he has not been able to locate counsel to represent him in it.

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 court is satisfied that the trustee has demonstrated that he cannot find counsel to represent him in the appeal before the California Court of Appeal. This court did not approve Mr. Callaham's employment as counsel for the estate in the appeal. Mr. Callaham's employment was approved to represent the estate solely in the federal court action. Dockets 101, 116, 117.

Although Mr. Callaham may have discussed with the City the settlement of the appeal along with settlement of the federal action, this does not make him attorney of record for the estate in the appeal and before the California Court

of Appeal.

More, the estate's discussions with the City to settle the appeal are not inconsistent with a conclusion that the appeal is burdensome to the estate, if the trustee has been unable to settle the appeal or find an attorney to represent him before the California Court of Appeal. Docket 122 ¶ 5. The court also notes that the last day to file an opening brief in the appeal was August 12, 2013. Docket 122 ¶ 6. This date has passed and the estate has obviously defaulted in the appeal.

In short, the trustee has met his burden of persuasion that the appeal is burdensome or of inconsequential value to the estate.

Finally, the City claims that "[s]hould the [t]rustee successfully abandon the appeal, that will reduce the value of the current settlement negotiations," as the City is willing to pay more to settle the appeal and the federal action than just the federal action. Docket 125 ¶ 9. But, this begs the question of why would the City want to settle an appeal on which the opposing party appellant has defaulted. The City does not answer this question. The court is not persuaded that the appeal is not of inconsequential value to the estate after the estate's default of not filing an opening brief.

The motion will be granted.

15. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO STAY STATE COURT PROCEEDINGS 8-26-13 [53]
DJH-2

Tentative Ruling: The motion will be denied.

The debtors are asking the court to stay the litigation by Wells Fargo Bank against them in state court.

The bank opposes the motion.

The motion will be denied for several reasons.

First, the court does not issue injunctions in a contested matter. Such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(7).

Second, this court does not have subject matter jurisdiction over any disputes between the debtors and the bank pending in state or any other court. This case was filed on July 19, 2010 as a chapter 7 proceeding. The trustee issued reports of no distribution in the case on October 22, 2010 and January 31, 2012. There was one more report of no distribution issued on April 18, 2010, but that report refers to a meeting of creditors held prior to October 22, 2010 - on August 27, 2010. The debtors' discharge was entered on November 16, 2010. The case was closed on March 9, 2012. Docket 44. Aside from motions to avoid a lien and motions for violations of the automatic stay or the discharge injunction, this court cannot have any "related to" (noncore) jurisdiction over any of the disputes between the debtors and the bank. The trustee is obviously not interested in administering any property of the debtors, including their claims against the bank. And, the debtors' chapter 7 case is over, as they have received what they bargained for in this case, their chapter 7 bankruptcy discharge.

Finally, to the extent applicable, the court will not exercise any jurisdiction

under Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327 (9th Cir. 1992). This motion will be denied.

16. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO RECONSIDER 8-21-13 [74]
DRE-5

Tentative Ruling: The motion will be denied.

The debtors are asking the court to reconsider its August 15, 2013 order denying their motion to avoid nine judicial liens (DCN DRE-4), except as to the lien of RTH Contracting. The liens at issue are in favor of 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 ruling disposing the motion follows below:

"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."

Docket 71.

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 that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

"[R]evisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original summary judgment motion was briefed' is likewise inappropriate." Van Skiver at 1243.

The debtors complain that all creditors, including the Operating Engineers Health & Welfare Trust Fund, were served with the lien avoidance motion. The debtors also contend that "it appears the only judgment creditor in each of the two cases [involving Operating Engineers Health & Welfare Trust Fund and Muniquip] has been served."

The motion will be denied for several reasons. First and most importantly, the debtors ignore the fact that no one appeared on their behalf at the August 12, 2013, hearing on the lien avoidance motion, even though the court had issued a tentative ruling denying the motion. Docket 71. In other words, the debtors are wasting the court's time by filing and prosecuting this motion. All issues raised in this motion could have been easily cleared up at the August 12 hearing on the lien avoidance motion, if the debtors had appeared.

Second, this motion has not been served on the Pension Trust Fund for Operating Engineers. Also, it has been served improperly on the Operating Engineers Health & Welfare Trust Fund. It was served on the Fund's "Third Party Administrators." The court has no evidence from the debtors that service on the Fund Administrator is binding on the Fund, especially when the Administrator is a third-party.

Third, the reference to the top of page three of the proof of service for the lien avoidance motion (Docket 67), for service on the Operating Engineers Health & Welfare Trust Fund, is not helpful because the proof of service reflects the same issue as the service of the Fund in this motion, *i.e.*, service was effectuated only on the "Third Party Administrators" for the Fund. The court does not have evidence that the Third Party Administrators for the Fund are authorized to accept service for the Fund.

Fourth, this motion does not contain any evidence that there were no other plaintiffs in the lawsuits leading to the judgments in favor of the Operating Engineers Health & Welfare Trust Fund and Muniquip. There is no declaration or affidavit establishing the factual assertions in the motion.

Fifth, assuming the debtors are correct that there were no other plaintiffs in the lawsuits leading to the judgments in favor of the Operating Engineers Health & Welfare Trust Fund and Muniquip, there was no information in the lien avoidance motion about whether there were other plaintiffs along the Fund and Muniquip. Thus, the court did not know this at the time it published its tentative ruling for the August 12 hearing.

Sixth, the court notes that this motion says nothing about the presence of other plaintiffs in the lawsuit that led to the judgment in favor of the Pension Trust Fund for Operating Engineers. That creditor's name in the

judgment was also followed by "et al."

Seventh, the motion to avoid liens was denied without prejudice. Rather than ask the court to reconsider it original decision, the debtor is free to refile the motion but this timely serving it correctly and supporting it with evidence.

The motion will be denied.

17. 13-29697-A-7 ERASMO/ALESHA GUTIERREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
EGS-1 — 9-6-13 [15]
GUILD MORTGAGE COMPANY 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, Guild Mortgage Company, seeks relief from the automatic stay as to real property in Oroville, California. The property has a value of $91,295 and it is encumbered by claims totaling approximately $131,441. The movant's deed is in first priority position and secures a claim of approximately $119,741.

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 August 28, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

FINAL RULINGS BEGIN HERE

18. 13-28304-A-7 MICHAEL KAHLICH AND DANA MOTION TO
DBJ-1 MUDD COMPEL ABANDONMENT
8-14-13 [11]

Final Ruling: The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

In addition, directing the court to the schedules without identifying the assets of the business and telling the court which assets are encumbered and/or exempt, and to what extent they are encumbered and/or exempt, invites the court to speculate about which assets belong to the business. The court should not have to speculate about the assets of the business. The motion will be denied.

19. 13-25605-A-7 SHAMELLE SCOTT MOTION TO
PLC-2 AVOID JUDICIAL LIEN
VS. PORTFOLIO RECOVERY 8-21-13 [21]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Portfolio Recovery Associates, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Service was addressed simply to "Attn: Bankruptcy." Docket 25. This does not satisfy Rule 7004(b)(3).

20. 13-30605-A-7 MICHELLE WELCH ORDER TO
SHOW CAUSE
8-28-13 [15]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the court waived the fee in an order entered on September 4, 2013. Docket 20. Thus, the order to show cause will be discharged as moot.

21. 13-28108-A-7 VERONICA JAVA MOTION FOR
RGJ-1 RELIEF FROM AUTOMATIC STAY
S. CALIFORNIA POSTAL CREDIT UNION VS. 8-15-13 [21]

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, Southern California Postal Credit Union, seeks relief from the automatic stay as to real property in Marysville, California. The property has a value of $75,000 according to Schedule A [counsel for the movant should note that valuations based on Zillow.com are inadmissible hearsay and inadmissible expert testimony] and it is encumbered by claims totaling approximately $194,554. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 24, 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.

22. 13-27214-A-7 ALYCE RITNER — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1
JPMORGAN CHASE BANK, N.A. VS. — 8-26-13 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to real property in Yuba City, California.

Given the entry of the debtor's discharge on September 11, 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 $80,000 and it is encumbered by claims totaling approximately $97,500. The movant's deed is in first priority position and secures a claim of approximately $81,731.

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 27, 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.

23. 12-38816-A-7 RYAN/STEPHANI SMITH — MOTION TO COMPEL ABANDONMENT 9-5-13 [41]
KAR-2

Final Ruling: The motion will be dismissed without prejudice because the certificate of service (Docket 46) indicates that the motion was not served on all creditors as required by Fed. R. Bankr. P. 6007(a). The motion was served only on the trustee and the U.S. Trustee.

24. 13-23225-A-7 LORRAINE LITTLE-DENNIS MOTION TO
JRR-2 DISGORGE FEES
8-21-13 [76]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of attorney Scott Sagaria 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 pursuant to 11 U.S.C. § 329 an order requiring the disgorgement of all $4,000 the debtor's counsel, Scott Sagaria, charged for assisting the debtor with the prosecution of the instant bankruptcy case.

11 U.S.C. § 329(b) and Fed. R. Bankr. P. 2017(a), (b) permit the court, after notice and a hearing, to determine whether the payment of fees before or after entry of the order for relief by the debtor to his counsel was excessive.

This court also has inherent authority to impose sanctions. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). The authority covers a broad range of conduct that goes beyond the violation of an order. Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009). While it may be used to impose civil contempt sanctions, this inherent authority may be applied without resorting to contempt proceedings, but only so long as the sanctions are intended to coerce compliance or compensate. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that the inherent sanction authority, and civil penalties in general, must either be compensatory in nature or designed to coerce compliance); see also Miller v. Cardinale (In re Deville), 280 B.R. 483, 495 (B.A.P. 9th Cir. 2002) (citing and discussing Chambers at 42-51 and Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278 (9th Cir. 1996)).

Chambers at 43 holds that the inherent sanction authority includes power to control admission to the court's bar and to discipline attorneys who appear before the court. See also Lehtinen at 1059 (reminding the suspended attorney that attorney disciplinary proceedings are neither civil nor criminal in nature and are not for the purpose of punishing but to maintain the integrity of the courts and the profession).

To exercise its inherent authority to sanction, a court must make explicit finding of bad faith or willful conduct, which is conduct more egregious than mere negligence or recklessness. Lehtinen at 1058.

California Rule of Professional Conduct 3-110 provides that:

"(A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(B) For purposes of this rule, 'competence' in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and

physical ability reasonably necessary for the performance of such service."

The debtor filed this case on March 11, 2013 with the assistance of a bankruptcy petition preparer, who charged the debtor $150. Docket 1. On April 10, 2013, the debtor retained Mr. Sagaria. A substitution of attorney form was executed by the debtor. Docket 14. Mr. Sagaria attended the initial meeting of creditors, held on April 18, but the debtor did not attend the meeting. At the meeting, Mr. Sagaria informed the trustee that the debtor was planning to convert the case to chapter 13. The trustee continued the meeting to May 16, 2013, to allow the debtor time for converting the case. On April 26, 2013, the debtor filed a motion for conversion of the case to chapter 13. Docket 22. The motion was set for hearing on May 20. Docket 23. On May 15, the debtor filed an amended motion for conversion, but did not set that motion for a hearing. Docket 27.

On May 15, the debtor also filed a rights and responsibilities of chapter 13 debtors and their attorneys statement, disclosing that Mr. Sagaria received $4,000 from the debtor for assisting the debtor in the prosecution of a chapter 13 case. Docket 36. $1,281 of that amount was listed as paid pre-petition. This is clearly inaccurate as Mr. Sagaria did not prepare the debtor's original petition documents and did not represent the debtor on the petition date.

Neither the debtor nor Mr. Sagaria appeared at the continued creditors' meeting on May 16. The trustee continued the meeting once again to June 6.

The first conversion motion was dismissed by the court without prejudice on May 22. Dockets 43 & 45. Another conversion motion was filed by the debtor on May 23. Docket 47. That motion was set for hearing on June 24. Docket 48.

Once again, neither the debtor nor Mr. Sagaria appeared at the continued creditors' meeting on June 6. The trustee continued the meeting to August 15 and filed a motion to dismiss the case due to the debtor's failure to appear at the June 6 meeting. Docket 56. The debtor filed a response to the motion, indicating that the case will be converted to chapter 13 by the August 12 hearing on the motion to dismiss. Docket 58.

On June 25, the court once again dismissed the debtor's conversion motion. Dockets 60 & 62. On June 26, the debtor filed yet another conversion motion, setting it for hearing on July 15. Docket 63 & 64. That motion was once again dismissed by the court on July 16. Dockets 69 & 71. The debtor filed another conversion motion on July 23, setting it for hearing on August 26. Dockets 72 & 73.

Only Mr. Sagaria appeared at the August 15 creditor's meeting, apprising the trustee of the latest conversion motion filed by the debtor. The debtor did not appear at the August 15 meeting. The trustee continued the meeting, yet once again, to September 5 and filed the instant motion.

The court dismissed the debtor's latest conversion motion on August 30. Dockets 80 & 84.

The debtor did not appear at the September 5 creditors' meeting, only Mr. Sagaria appeared. The trustee continued the meeting to November 7 and filed a motion to dismiss the case due to the debtor's failure to appear at that meeting. Docket 86. The hearing on the motion to dismiss has been set for October 21. Docket 87.

The trustee complains of Mr. Sagaria's incompetence of not being able to obtain a conversion of the case to chapter 13, while the trustee is wasting time and incurring costs in having to hold creditors' meetings, continue them, and file and prosecute dismissal motions.

The court agrees. For five months, Mr. Sagaria has been unable to obtain conversion of the case to chapter 13. And, the debtor has not appeared at a single meeting of creditors in this case, for nearly seven months now. The trustee and the creditors have been prejudiced. The trustee has wasted time and incurred expenses in having to hold five creditors' meetings, without the ability to examine the debtor, as well as bring two dismissal motions, while the automatic stay protects the debtor and her assets from creditors.

Given Mr. Sagaria's inability to obtain conversion to chapter 13, as described above, the court concludes that his $4,000 fee for chapter 13 services is excessive. The court also concludes that he has violated California Rule of Professional Conduct 3-110(A). He has repeatedly failed to perform legal services. He did not appear to represent the debtor at two meetings of creditors, on May 16 and June 6. He has filed six motions for conversion of the case to chapter 13. Dockets 22, 27, 47, 63, 72, 89. All have been dismissed or denied for various procedural issues, except for the last conversion motion, which is due to be heard on October 21.

More important, Mr. Sagaria has not been assisting the debtor in the compliance with her duties as a chapter 7 debtor. A chapter 7 debtor is not excused from complying with his statutory duties, such as appearing at creditors' meetings and cooperating with the trustee, just because he intends to seek conversion of the case to chapter 13. Until an order converting the case is entered, the debtor is still a chapter 7 debtor, required to appear at creditors' meetings and cooperate with the trustee in the administration of the chapter 7 estate.

From the circumstances described above, the court infers that Mr. Sagaria has failed to advise the debtor of her obligations as a chapter 7 debtor and, moreover, has counseled the debtor that she may ignore her obligations in the chapter 7 case. Mr. Sagaria appeared at three creditors' meetings to inform the trustee of the debtor's desire and pending respective motion for conversion to chapter 13. From this, the court infers that Mr. Sagaria advised the debtor that she does not have to appear at the creditors' meetings.

In reaching the above conclusions, the court also takes into account Mr. Sagaria's failure to respond to this motion.

As Mr. Sagaria collected the $4,000 fee from the debtor to provide chapter 13 services to her, but he has not obtained a conversion of the case for over five months now, the court will order Mr. Sagaria to disgorge the entire $4,000 fee. The fee shall be turned over to the chapter 7 trustee, to reimburse him for his time and expenses in bringing this motion, bringing two motions to dismiss the case, and filing reports for and continuing five creditors' meetings without any success at examining the debtor. The motion will be granted.

25.	13-29225-A-7 JENNIFER NAVICKY	MOTION FOR
	PKB-1	RELIEF FROM AUTOMATIC STAY
	THE BANK OF NEW YORK MELLON VS.	8-21-13 [20]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

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

The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Carmichael, California. The property has a value of $123,000 and it is encumbered by claims totaling approximately $277,924. The movant's deed is in first priority position and secures a claim of approximately $190,424.

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 August 14, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) 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. 13-24926-A-7 CHRIS LEONARD — MOTION TO AVOID JUDICIAL LIEN
RJB-2
VS. PROFESSIONAL COLLECTION CONSULTANTS — 8-15-13 [27]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Professional Collection Consultants for the sum of $14,087.38 on April 9, 2012. The abstract of judgment was recorded with Sacramento County on May 29, 2012. That lien attached to the debtor's residential real property in Citrus Heights, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Amended Schedule A, the subject real property has an approximate value of $145,000 as of the date of the petition. The unavoidable liens total $144,093 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $907 in Schedule C.

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

27. 11-45927-A-7 RICHARD/TERESA KOOI — MOTION TO APPROVE COMPENSATION OF PLAINTIFFS' ATTORNEY (FEES $3,755) 8-22-13 [159]
12-2058 DTW-5
KOOI V. KOOI ET AL

Final Ruling: The hearing on this motion will be continued to September 30, 2013 at 10:00 a.m., as motions in adversary proceedings are not heard on this calendar.

28. 12-24831-A-7 RANDEEP DEOL — MOTION TO WITHDRAW AS ATTORNEY 8-20-13 [102]
AGT-1

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.

Attorney Aristides Tzikas asks for permission to withdraw as counsel for the debtor. The movant has been unable to locate the defendant. His attempts to contact her have been unsuccessful.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an

attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

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

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

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

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

(B) Mandatory Withdrawal.

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

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

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

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

(C) Permissive Withdrawal.

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

matters, unless such request or such withdrawal is because:

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

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

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

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

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

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

The movant has been unable to locate the debtor and he has been informed that she has left the country. The debtor has not returned several telephone calls placed by the movant.

As the debtor has been unresponsive to the movant, she has rendered it unreasonably difficult for him to carry out his duties as her attorney and represent her effectively. This is cause for permitting the withdrawal of the movant pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The court will permit his withdrawal from this bankruptcy case. The motion will be granted. The granting of this motion does not affect the movant's representation of the debtor in other proceedings.

29. 13-25733-A-7 RODNEY/REGINA LARKINS — MOTION TO RESERVE ASSET UPON CLOSING OF THE CASE
SLF-2 — 8-19-13 [23]

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 is asking the court to retain jurisdiction over an asset consisting of a pending products liability lawsuit in multi-district litigation that may not be resolved for approximately another two years.

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."

While the trustee does not believe that the lawsuit has value for the estate at this time, the lawsuit may have substantial value for the estate in the future, depending on the outcome of the other lawsuits in the litigation. More, the debtors have scheduled only $25,227.16 in unsecured debt, meaning that even a relatively small recovery from the lawsuit may generate significant dividend to general unsecured creditors. Given this, the court will reserve jurisdiction over the lawsuit. It will not be abandoned upon closure of the case. And, given the estate's interest in the lawsuit, the debtors may not transfer or encumber any interest in the lawsuit, without further order of this court. The debtors shall notify the United States Trustee in writing of the disposal of the lawsuit, within 10 days of entry of judgment or any order disposing of the lawsuit. The motion will be granted.

30. 05-29741-A-7 BERNARD ARCHIBEQUE
MHK-4

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $11,031.50, EXP. $900.37)
8-19-13 [106]

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.

Megan, Hanschu & Kassenbrock, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $11,031.50 in fees and $920.37 in expenses, for a total of $11,951.87. The requested compensation covers the period of March 24, 2005 through the present. The court approved the movant's employment as the trustee's special counsel on May 5, 2005. The movant charged hourly rates of $90 and $215.

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) objecting to the debtors' amended exemption claim in the beneficial interest in a family trust, (2) opposing a motion to compel abandonment by the debtors, (3) communicating with the trustee about the administration of the estate, 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.

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

31. 05-29741-A-7 BERNARD ARCHIBEQUE — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $1,175) 8-20-13 [111]
PEQ-1

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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,175 in fees and $0.00 in expenses. This motion covers the period from October 2, 2005 through the present. The court approved the movant's employment as the estate's accountant on October 14, 2005. In performing its services, the movant charged hourly rates of $200 and $250.

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 advising the estate about the value of its interest in an inheritance, preparing a declaration on the subject, and preparing and filing the instant compensation motion.

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

32. 11-42346-A-7 ERNEST BEZLEY — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $10,000) 8-28-13 [181]
DCJ-2

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor,

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

The motion will be granted.

David Johnston, attorney for the debtor during the chapter 11 portion of the case, has filed his first and final motion for approval of compensation. The requested compensation consists of $10,000 in fees (reduced by approximately 50%) and $0.00 in expenses (reduced from an unspecified total amount, which includes the chapter 11 fee of $1,039). This motion covers the period from September 15, 2011 through June 5, 2013, the date the case was converted from chapter 11 to chapter 7. The court approved the movant's employment as the trustee's attorney on December 29, 2011. In performing its services, the movant charged hourly rates 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) assisting the debtor successfully with his defense of a nondischargeability complaint, (2) preparing and filing petition documents not filed on the petition date, (3) attending court hearings, (4) representing the debtor at the IDI and meeting of creditors, (5) opposing several motions for conversion or dismissal, (6) preparing and filing a plan and disclosure statement, and (7) 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.

The court reminds the movant that chapter 7 administrative expenses have priority in payment over chapter 11 administrative expenses.

33. 12-40646-A-7 KULWANT MAHI — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-2 — 8-13-13 [40]
WELLS FARGO 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 in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Paradise, 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 $180,000 and it is encumbered by claims totaling approximately $250,083. 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.

34. 13-28949-A-7 HARDEEP SINGH AND GURCHARAN KAUR — MOTION TO AVOID JUDICIAL LIEN
DVD-1 VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 8-22-13 [11]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Portfolio Recovery

Associates, L.L.C. for the sum of $5,047.33 on July 20, 2012. The abstract of judgment was recorded with San Joaquin County on August 17, 2012. That lien attached to the debtor's residential real property in Lathrop, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $188,000 as of the date of the petition. The unavoidable liens total $221,830 on that same date, consisting of a single mortgage in favor of Seterus, Inc. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Schedule C.

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

35. 11-24752-A-7 DANIEL ROGERS — MOTION FOR TURNOVER OF PROPERTY
DNL-6 — 8-19-13 [80]

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

The motion will be granted.

The trustee asks for an order directing the debtor to turn over to the estate $10,057.87, representing $5,391.87 the debtor withdrew from his UBS financial services stock account and $4,666 he withdrew from the non-exempt portion of his deposit accounts with Bank of the West and Wells Fargo Bank.

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."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case. If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

Fed. R. Bankr. P. 7001(1) allows a request to compel the debtor to deliver property to the trustee to be brought by a motion rather than by an adversary proceeding complaint.

The court has sustained an objection to an exemption in the debtor's UBS account on the basis of bad faith. Docket 44. The court had also sustained the debtor's exemptions in the Bank of the West and Wells Fargo Bank accounts on the basis that he exceeded the wild card exemption, but then the debtor promised to turn over to the trustee the proceeds that exceed the wild card exemption limit. Because of that promise, the court dismissed as moot this portion of the trustee's exemption objection. Docket 44. Nevertheless, the debtor has not turned over to the trustee the proceeds exceeding the wild card exemption limit. Accordingly, the court will enter an order compelling the debtor to turn over to the trustee the proceeds belonging to the estate.

36. 11-24752-A-7 DANIEL ROGERS — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2207 DNL-1 — 8-20-13 [15]
HOPPER V. ROGERS

Final Ruling: The hearing on this motion will be continued to September 30, 2013 at 10:00 a.m., as motions in adversary proceedings are not heard on this calendar.

37. 10-31261-A-7 MICHELE REED — MOTION TO AVOID JUDICIAL LIEN
PSB-2 — 7-30-13 [19]
VS. BENEFICIAL CALIFORNIA, INC.

Final Ruling: The motion will be dismissed without prejudice because it has not been served on the respondent creditor, Beneficial California, Inc. Rather, the motion has been served on an entity named Mann Bracken L.L.C.. Dockets 25 & 30.

38. 11-40062-A-7 BONNIE PISHOS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $2,000)
SLF-3 — 8-19-13 [105]

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 Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,000 - reduced from $13,635.50 in fees and $165.74 in expenses, for a total of $13,801.24. This motion covers the period from September 1, 2011 through the present. The court approved the movant's employment as the trustee's attorney on September 27, 2011. In performing its services, the movant charged hourly rates of $90, $250, $275 and $295.

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) communicating with the trustee about the administration of the estate, (2) over the objecting to the debtor's exemption claims, (3) reviewing and analyzing the litigation involving the bankruptcy trustee in the case filed by the debtor's former spouse, Thomas Pishos, (4) negotiating and preparing a settlement agreement with the estate of Thomas Pishos, resolving this estate's interest in the Hunting Lodge promissory notes, (5) obtaining court approval of the settlement agreement, and (6) 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.

39. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO AVOID JUDICIAL LIEN
DJH-3
VS. NATIONAL CREDIT CONTROL AGENCY, ET AL — 8-26-13 [57]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on National Credit Control Agency without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

40. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO AVOID JUDICIAL LIEN
DJH-4
VS. CHARTER ADJUSTMENTS CORP., ET AL — 8-26-13 [61]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Charter Adjustments Corporation without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

41. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR SANCTIONS
DJH-5 — 8-26-13 [67]

Final Ruling: The hearing on this motion has been continued to October 21, 2013 at 10:00 a.m.

42. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR SANCTIONS
DJH-6 — 8-26-13 [73]

Final Ruling: The hearing on this motion has been continued to November 4, 2013 at 10:00 a.m.

43. 13-29270-A-7 RICKY BAKER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JFL-1 — 8-21-13 [12]
FEDERAL NATIONAL MORTGAGE ASSOC. 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, Federal National Mortgage Association, seeks relief from the automatic stay as to real property in Paradise, California. The property has a value of $127,600 and it is encumbered by claims totaling approximately $270,374. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 14, 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.

44. 13-29175-A-7 TERESA GUMUCIO
MRS-1

MOTION TO
COMPEL ABANDONMENT
8-15-13 [10]

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 requests an order compelling the trustee to abandon the estate's interest in her day care business, 2nd Home Day Care.

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 business name, toys and implements, as listed in Amended Schedule B. Docket 9. The assets have a value of $1,500 and have been claimed fully exempt in Amended Schedule C. Docket 9. Given the exemption claims, 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.

45. 13-28082-A-7 LINDSEY JOHNSON
GW-1
VS. CHASE BANK USA, N.A.

MOTION TO
AVOID JUDICIAL LIEN
8-16-13 [19]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Chase Bank U.S.A. for the sum of $5,850.52 on January 18, 2011. The abstract of judgment was recorded with Sacramento County on August 24, 2011. That lien attached to the debtor's residential real property in Rancho Cordova, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $225,000 as of the date of the petition. The unavoidable liens total $249,827

on that same date, consisting of a mortgage in favor of Nationstar Mortgage for $249,270 and an utility lien in favor of Sacramento County for $557. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $18,986 in Schedule C.

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

46. 13-28082-A-7 LINDSEY JOHNSON — MOTION TO AVOID JUDICIAL LIEN
GW-2
VS. DISCOVER BANK — 8-16-13 [24]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $8,979.90 on July 27, 2010. The abstract of judgment was recorded with Sacramento County on January 4, 2012. That lien attached to the debtor's residential real property in Rancho Cordova, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $225,000 as of the date of the petition. The unavoidable liens total $249,827 on that same date, consisting of a mortgage in favor of Nationstar Mortgage for $249,270 and an utility lien in favor of Sacramento County for $557. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $18,986 in Schedule C.

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

47. 13-28082-A-7 LINDSEY JOHNSON — MOTION TO AVOID JUDICIAL LIEN
GW-3
VS. CALVARY SPV I, L.L.C. — 8-16-13 [12]

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

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

The motion will be granted.

A judgment was entered against the debtor in favor of Calvary SPV I, L.L.C. for the sum of $16,433.42 on June 1, 2012. The abstract of judgment was recorded with Sacramento County on October 9, 2012. That lien attached to the debtor's residential real property in Rancho Cordova, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $225,000 as of the date of the petition. The unavoidable liens total $249,827 on that same date, consisting of a mortgage in favor of Nationstar Mortgage for $249,270 and an utility lien in favor of Sacramento County for $557. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $18,986 in Schedule C.

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

48. 12-37983-A-7 BAR STEEL SERVICES, INC. MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $2,750, EXP. $5.80) 8-13-13 [49]
JRR-4

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

The motion will be granted.

Gonzales & Sisto, accountant for the estate, has filed its second and final motion for approval of compensation. The requested compensation consists of $2,750 in fees and $5.80 in expenses, for a total of $2,755.80. This motion covers the period from April 25, 2013 through July 31, 2013. The court approved the movant's employment as the estate's accountant on October 29, 2012. In performing its services, the movant charged hourly rates of $190 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for

actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included assisting the trustee with tax reporting issues, with the preparation of tax returns and 505(b) letters, with the preparation of payroll forms, and with calculations for the payment of wage claims.

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