UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 4, 2013 at 10:00 a.m.

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

1, 2, 14, 15, 16, 17

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 3, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 18, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 25, 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. 13-28900-A-7 HMS-1 — ARTHUR YSMAEL AND MIRIAM YSMAEL — MOTION TO EXTEND DEADLINE 9-23-13 [25]

Tentative Ruling: The motion will be granted.

The trustee requests a 60-day extension, from September 23, 2013 to November 22, 2013, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtors' financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was September 23, 2013. The motion was filed on September 23. Thus, the motion complies with the temporal requirements of the rule.

The trustee has discovered new information about the debtors' affairs and has requested that they provide him with information about potential assets that could be administered for the benefit of the estate. However, the debtors have not responded to the trustee, as of the time this motion was filed, compelling the trustee to request the instant extension. Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to November 22, 2013.

2. 13-32205-A-7 SBS-1 — LEE STOREY AND MONICA GUARDADO — MOTION TO COMPEL ABANDONMENT 10-15-13 [14]

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

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their day care business, M&M Loving 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 "TV, (DVD's for toddlers, infants, and school age children), tricycle, basketballs, books, plastic swimming pool, paint brushes, color books, color crayons washable paints,

number flash cards, ABC flash cards, pillows, jungle construction paper, diapers/pull ups, wipes, rocking chair, place mats, cots, bottles, changing tables, bottle warmer, high chair, car seats, booster seats, children table, blankets, easel jungle gym, outside picnic table, chalk board, first aid kit, fire extinguisher, cubbies, toothpaste, tooth brushes, baby lotion/powdered, medicines, pencils, erasers, scissors, glue, glitter, computer for leap frog, v-tech tablet, learning toys (infants, toddlers, school age children), baby spoons, sand box, step stools, spare clothes (infants, toddlers, school age children), and a potty chair."

According to Schedule B, the assets have a value of $4,650 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

3. 10-45219-A-7 JOSEPH SCROGGINS — MOTION FOR CONTEMPT AND FOR SANCTIONS
BLG-1 — 9-30-13 [28]

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

The debtor asks for sanctions against General Produce Company, Ltd, Northern California Collection Service, Inc., and Steven Cribb, Esq.

The debtor has dismissed the motion with respect to General Produce.

The motion will be denied as to Mr. Cribb, as his actions have been solely in his capacity as counsel for NCCS. Mr. Cribb individually does not hold a debt owed by the debtor or Sierra Coast.

The facts precipitating this motion are as follows. The debtor filed this bankruptcy case on September 22, 2010 and he received his discharge on January 7, 2011. The trustee filed a report of no distribution on November 2, 2013.

Pre-petition, the debtor operated a restaurant business known as Stonebrooks Restaurant through a wholly-owned corporation, Sierra Coast Investments, Inc. In the operation of the restaurant, Sierra Coast did business with General Produce Company, Ltd. Pre-petition, on May 3, 2006, the debtor signed a personal guaranty with General Produce with regard to Sierra Coast's debt to General Produce.

In or about March or May 2011, after the debtor received his bankruptcy discharge on January 7, 2011, Sierra Coast defaulted on the debt it owed to General Produce. Sierra Coast appears to have defaulted on invoices covering the period from May 6, 2011 until August 26, 2011. This is a period after the filing of the bankruptcy case.

On September 14, 2011, General Produce assigned the debt owed by Sierra Coast, to Northern California Collection Service, Inc. General Produce claims that "[t]he assignment was limited to the Delinquent Account owed by Sierra Coast Investments, Inc." Docket 42 ¶ 4.

NCCS then began attempting to collect the debt owed by Sierra Coast. In September 2011, NCCS called the debtor in an effort to collect the debt. The debtor told NCCS that Sierra Coast had closed its business and that the debtor received a chapter 7 discharge in a personal bankruptcy case. Docket 31 ¶ 13.

On October 6, 2011, NCCS filed a state court action against Sierra Coast, the debtor in his individual capacity, and others, in an attempt to collect on the debt owed by Sierra Coast. Docket 34, Ex. C. The debtor called NCCS once again, letting NCCS know that he had been in bankruptcy and had received a chapter 7 discharge. Sometime after the telephone call, the debtor faxed NCCS "the bankruptcy information." Docket 31 ¶ 16.

On November 11, 2011, counsel for the debtor sent a letter on behalf of the debtor to NCCS, asking for proof of the debtor's personal liability on the debt owed by Sierra Coast. Docket 34, Ex. D.

NCCS sent the debtor the May 3, 2006 personal guaranty he had executed in favor of General Produce for Sierra Coast's debt and the outstanding May 6 to August 26, 2011 invoices issued to Sierra Coast.

On December 8, 2011, the debtor sent back to NCCS a letter informing it that his obligation on the personal guaranty had been discharged in his chapter 7 bankruptcy case, on January 7, 2011. The debtor also requested that the state court action be dismissed against him personally. Docket 34, Ex. E.

NCCS acknowledged receiving the December 8 letter from the debtor and it did not dispute the contention that the debtor's personal guaranty obligations had been discharged in the bankruptcy. Nevertheless, NCCS did not dismiss the collection action against the debtor.

On December 22, 2011, the debtor answered the state court complaint, once again asserting that his obligations on account of the personal guaranty were discharged in the bankruptcy. Docket 34, Ex. F. Nevertheless, once again, NCCS continued with the prosecution of the collection action, obtaining a judgment against the debtor. NCCS also obtained a writ of execution against the debtor on July 15, 2013. Docket 34, Ex. G.

In August 2013, the debtor's bank account was levied in the amount of $50, pursuant to the writ of execution NCCS had obtained against him. On September 3, 2013, counsel for the debtor once more sent a letter to NCCS, asking it to return the collected funds, set aside the judgment against the debtor, and stop their collection efforts against the debtor. Docket 34, Ex. H.

NCCS did not respond to the debtor's September 3, 2013 letter. As a result, the instant motion was filed on September 30, 2013.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a

party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the sanctions are justified. Namely, the party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

The court does not have the authority to award punitive damages for violations of the discharge injunction because civil contempt sanctions are only remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

The court rejects NCCS' contention that the discharge injunction was not violated because NCCS was collecting on a debt incurred by Sierra Coast after the petition date of the debtor's bankruptcy filing. It is true that the debt NCCS was attempting to collect from the debtor was incurred by Sierra Coast from March or May 2011 until August 2011, whereas the debtor filed the instant bankruptcy case on September 22, 2010 and received his discharge on January 7, 2011.

But, NCCS cannot collect the debt of Sierra Coast from the debtor, unless NCCS invokes its rights under the personal guaranty. The guaranty was signed before the bankruptcy case was filed. The court does not accept the contention that the debtor's bankruptcy discharge had no effect on his personal guaranty of Sierra Coast's debt. Such premise conflicts with the fairly broad definition of a claim in the bankruptcy context.

11 U.S.C. § 727(b) provides: "Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from *all* debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title."

A chapter 7 discharge then discharges a debtor from personal liability for "all debts that arose before the date of the order for relief under this chapter . . . whether or not a proof of claim based on any such debt or liability is filed . . . and whether or not a claim based on any such debt or liability is allowed." 11 U.S.C. § 727(b).

A "debt" is defined as "liability on a claim." 11 U.S.C. § 101(12). In turn, a "claim" is broadly defined as "(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." 11 U.S.C. § 101(5).

The Ninth Circuit has identified the above definition as the "broadest possible definition" of claim. "This 'broadest possible definition' of 'claim' is designed to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" California Dept. of Health Servs. v. Jensen (In re Jensen), 995 F.2d 925, 929-30 (9th Cir. 1993) (citing to H.R.Rep. No. 595, 95th Cong., 2d Sess. 1, 309 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6266; S.Rep. No. 598, 95th Cong., 2d Sess. 1, 22, reprinted in 1978 U.S.C.C.A.N. 5787, 5808).

This very broad definition of a claim, however, is not boundless. As noted by NCCS, in Jensen, the Ninth Circuit identified four different tests for determining when a claim arises, pre or post-petition:

(1) the claim arises when the right to payment accrues,

(2) the claim arises when a relationship is established between the debtor and the creditor, *i.e.*, the earliest point in the relationship between the debtor and the creditor,

(3) the claim arises at the time of the debtor's conduct, or

(4) the claim arises from damages that can be fairly contemplated by the parties at the time of the debtor's bankruptcy.

Jensen at 928-31.

First, Jensen rejected and this court also rejects the "right to payment" test because it ignores the scope of the claim definition in 11 U.S.C. § 101(5). By including contingent and unmatured rights to payment, that provision clearly goes beyond the mere right to payment. Jensen at 929.

Second, the court in Jensen was not impressed with the "relationship" test either. The test is over-inclusive as it could easily encompass debt that was not fairly contemplated by the parties. In addition, Jensen discussed the test mainly in the context of tort claims, where the conduct underlying the claim was committed pre-petition, but it or the resulting injury was not discovered until after the petition date.

Here though, the claim at issue relates to a contractual obligation, and not tortious conduct. The debtor committed himself to by contract to answer for the debtors of his closely held corporation before he filed bankruptcy. Thus, the "relationship" test would be satisfied if the court were to apply it. The relationship between the debtor and NCCS pre-dates the petition date.

Third, this leaves the "debtor's conduct" and "fair contemplation" tests.

NCCS urges the court to utilize the "debtor's conduct" test, a test that Jensen defined as the claim arising at the time of the debtor's conduct. In Jensen, the context was hazardous waste cleanup costs and the timing of the debtor's conduct was the time of contamination.

The court is not persuaded that the "debtor's conduct" test is the test that should be applied here. As noted by Jensen and subsequent decisions, the test allows for the possibility that a claim is discharged even when the creditor has no way of knowing of the claim.

More important, in the context of contractual obligations, such as the one

here, the debtor's conduct is his promise to pay. Bankruptcy law does not wait for the debtor to default on ongoing debt so he can obtain a discharge of his personal liability on a debt. The fact that the debtor may be current on an ongoing debt as of the petition date does not deprive him from receiving a bankruptcy discharge.

Applying the "debtor's conduct" test to contractual debt based on a debtor's promise to pay then makes little sense because that test would be satisfied almost always.

It is not surprising that the cases cited by NCCS applying the debtor's conduct test involve only tortious-type conduct. See Hassanally v. Republic Bank (In re Hassanally), 208 B.R. 46 (B.A.P. 9th Cir. 1997) (involving construction defect claims); Papadakis v. Zelis (In re Zelis), 66 F.3d 205 (9th Cir. 1995) (involving a claim for sanctions identified as tortious in nature); see also Hexcel Corp. v. Stepan Co.(In re Hexcel Corp.), 239 B.R. 564, 570 n.8 (N.D. Cal. 1999) (citing also to In re Russell, 193 B.R. 568 (Bankr. S.D. Cal. 1996) (involving a claim for misrepresentation)).

Nevertheless, even if the court were to apply the "debtor's conduct" test to this case, the only conduct that can be attributed to the debtor is his pre-petition promise to pay Sierra Coast's unpaid debt to General Produce. The debtor himself did nothing after filing for bankruptcy and after receiving his discharge, with respect to his personal guaranty obligation. For instance, he did not execute another guaranty to guarantee the debt of Sierra Coast.

It was Sierra Coast, an entity separate from the debtor, that stopped paying its debt to General Produce. And, the debtor was sued by NCCS only because Sierra Coast stopped paying its debt. Thus, even by applying the "debtor's conduct" test, NCCS' claim arose pre-petition, when the debtor promised to pay for Sierra Coast's outstanding debt, the only conduct that can be attributed to the debtor.

Fourth, this leads us back to 11 U.S.C. § 101(5), the fair contemplation test, and the definition of a contingent claim.

"[C]laims are contingent . . . if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor and if such triggering event or occurrence was one reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred."

Hexcel at 567 (determining that the bankruptcy court correctly applied the fair contemplation test; quoting Semel v. Dill (In re Dill), 731 F.2d 629, 631 (9th Cir. 1984)).

Claims that are contingent or unmatured under state law are nevertheless claims, and hence dischargeable, even though not yet ripe for suit. See Stone Street Services, Inc. V. Granati (In re Granati), 271 B.R. 89, 94 (Bankr. E.D. Va. 2001) (noting that a pre-petition indemnification agreement gives the indemnitee a contingent pre-petition claim, even where the conduct giving rise to the indemnification occurs post-petition; also noting that product defect injuries resulting from a pre-petition installation of the product are a claim even though injury did not manifest itself until after bankruptcy filing).

Stated differently, a contingent claim as of the petition date is a "debt[] that arose before the date of the order for relief" and it is dischargeable

under 11 U.S.C. § 727(b). The fact a debt arising from a pre-petition contract does not mature or ripen into a liquidated debt until after the bankruptcy case, does not make the claim any less of a pre-petition claim. See also Russo v. HD Supply Electrical, Ltd. (In re Russo), 494 B.R. 562, 566-67 (Bankr. M.D. Fla 2013) (in a case involving the same facts, determining that: "[T]he Debtor's personal liability under the Guaranty was subject to being discharged. On the date the Debtor filed for bankruptcy, HD Supply held a contingent claim against the Debtor for any *future* indebtedness that the Company incurred and failed to pay. Even though the future indebtedness had not yet been incurred, the claim itself (as a contingent right to payment) still existed by virtue of the Debtor's execution of the prepetition Guaranty. And because the Guaranty rendered the Debtor liable for HD Supply's claim, the 'debt' existed prepetition. Accordingly, the Debtor's liability under the Guaranty for that prepetition debt was subject to being discharged under § 727(b)").

NCCS mis-characterizes the fair contemplation test, defining it as "the claim arises pre-petition if it is based on pre-petition conduct that can be fairly contemplated by the parties at the time of the debtor's bankruptcy." Docket 36 at 4. However, it is not the pre-petition conduct that must have been fairly contemplated on the petition date. It makes no sense to ask whether the parties have contemplated conduct that has already taken place.

The issue is whether the parties can be said to have contemplated the post-petition events that give rise to a claim. As stated by the court in Jensen, a claim based on pre-petition pollution was a dischargeable claim because "all future response and natural resource damages cost based on pre-petition conduct [could] be fairly contemplated by the parties at the time of [d]ebtors' bankruptcy . . . ." Jensen at 930. In other words, the contemplation as of the petition date is of the "future response and natural resource damages cost," not the "pre-petition conduct."

Hexcel defines it as the "triggering event or occurrence [that] was . . . reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred." The triggering event and the event giving rise to the claim are different events.

As discussed above, the only conduct of the debtor, upon which NCCS' claim arises, is his pre-petition promise to pay any delinquent debt of Sierra Coast. At that time, both the debtor and General Produce obviously contemplated that Sierra Coast may stop paying its ongoing debt to General Produce. They contemplated the same also when the debtor filed for bankruptcy, as the personal guaranty was in force on the petition date. The debtor and General Produce reasonably and fairly contemplated pre-petition the triggering event for the debtor's obligation to pay Sierra Coast's debt, *i.e.*, Sierra Coast's default on that debt.

On the petition date, then, the claim now purportedly held by NCCS was a contingent and unmatured claim that was discharged when the debtor received his discharge. As a result, when NCCS attempted to collect the claim from the debtor, filed a lawsuit, obtained a judgment against the debtor, obtained a writ of execution on the judgment, attached proceeds from the debtor's bank account, and refused to undo all their collection efforts after being asked by the debtors, NCCS violated the discharge injunction.

From the above facts, it is clear that NCCS knew of the discharge injunction when it violated the injunction and intended the actions it took in violation of the injunction. The debtor told NCCS that he had received a chapter 7

discharge in a personal bankruptcy case, as early as September 2011. Docket 31 ¶ 13.

The court rejects NCCS' contention that NCCS did not know of the applicability of the discharge injunction as it "believed in good faith that the debt at issue was not subject to [the debtor's] discharge." Docket 36 at 6.

NCCS' subjective belief about what constitutes a pre-petition claim in this jurisdiction is irrelevant. Stated differently, ignorance of the law on violations of the discharge injunction is not a defense.

Moreover, NCCS could not have believed in good faith that it was not violating the discharge injunction because such belief was anchored in two lower court cases from outside of the Ninth Circuit, which cases are not representative of the law in the Ninth Circuit, *i.e.*, In re Haught, 120 B.R. 233 (Bankr. M.D. Fla 1990) and In re Thomas, 2013 Bankr. LEXIS 3675 (Bankr. N.D. Ind. Apr. 30, 2013). Neither of the cases are binding authority in the Ninth Circuit and neither of them declare the standard of what is a dischargeable pre-petition claim under section 727(b) in this circuit. The court rejects the contention that NCCS' belief about the state of the law was in good in faith.

More important, the standard of what is a dischargeable pre-petition claim under section 727(b) in the Ninth Circuit has been articulated by Jensen, a case also cited and discussed by NCCS. And, as discussed above in this ruling, NCCS' claim against the debtor, based on the guaranty, satisfies each of the three tests considered by Jensen, the "relationship" test, the "debtor's conduct" test, and the "fair contemplation" test. Thus, under Jensen, regardless of which test this court applies, the claim based on the debtor's guaranty was a pre-petition claim that was discharged.

Turning to damages, the court will award the debtor's actual damages in attempting to enforce the discharge injunction. The problem is that the debtor has given very little evidence of such actual damages. The only evidence the court has is: $50 seized by NCCS from the debtor's bank account(s), late and service bank fees and charges of $270, and a $10 month service charge for inability to have a direct deposit for two months, September and October 2013. Docket 31 at 4-5.

The debtor says that he incurred a $5 fee for each cashier check he had to use to pay his bills, but he does not say how many bills he has had to pay with cashier checks. Also, there is no evidence of how much in attorney's fees the debtor incurred in attempting to enforce the discharge injunction.

Further, the debtor says that he sustained emotional distress in having to defend himself against the collection efforts of NCCS. However, there is no evidence of any substantial emotional damage to the debtor or costs incurred in dealing with such. Nevertheless, the debtor went through much inconvenience and hardship in having to defend himself against NCCS. He retained counsel and had to make decisions about whether and to what extent to defend the lawsuit filed by NCCS, had a judgment entered against him, had to cancel the direct deposit of his salary checks and find another way to receive and manage the salary proceeds, and had to restructure the way banked and payed his bills because NCCS was seizing funds from his bank accounts.

As compensatory damages, the court will award the debtor $3,000 for his inconveniences and hardship in defending against NCCS' collection efforts. This does not include his attorney's fees and costs in defending NCCS'

collection efforts and bringing this motion.

Finally, the court will order NCCS to void the state court judgment entered against the debtor, notify all credit reporting agencies that the debtor does not owe the subject debt to NCCS, and undo any other actions taken in an attempt to collect on the debt against the debtor.

The court makes no determination about the merits of NCCS' claim based on the guaranty against the debtor, including whether and the extent to which the claim against the debtor was transferred from General Produce to NCCS. Whether or not NCCS had the right to assert a claim against the debtor based on the guaranty is irrelevant because NCCS asserted and collected on such a claim, in violation of the discharge injunction.

4. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO CONVERT CASE TO CHAPTER 13
WSS-2 — 9-16-13 [33]

Tentative Ruling: The motion will be denied without prejudice.

The debtors are seeking conversion of their case to chapter 13. The trustee and creditors Mohammad Nayibkhil and Arian Baraki have filed opposition to the motion.

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: "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)."

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

Given the absence of any evidence, including admissible evidence, with the motion, the court cannot determine whether the debtors are eligible for chapter 13 relief under Marrama.

The motion will be denied also because the proof of service with the motion does not indicate that the debtors have downloaded the creditor matrix from the court's website. As a result, the court cannot tell whether all creditors have been served with the motion.

To the extent the debtors have provided evidence in their reply to the opposition, it will not be considered. If evidence is not presented with the motion, respondents will be sandbagged. Just as the court cannot determine whether the debtors are eligible for chapter 13 relief under Marrama, the trustee and the creditors cannot determine such either.

Further, the debtors' counter motion to strike the opposition of Mohammad Nayibkhil and Arian Baraki will be denied. In addition for the reasons stated above, the counter motion will be denied also because it was filed only seven days before the November 4 hearing, on October 28, in violation of Local Bankruptcy Rule 9014-1(I), which requires that counter motions "be filed and served no later than the time opposition to the original motion is required to be filed." Docket 62. As this motion was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(1), opposition to the motion was due 14 days prior to the November 4 hearing, on October 21.

Finally, in denying the motion, the court is not adjudicating the merits of the responses to the motion. However, if the motion is refiled and the trustee once again files a 19-page opposition to the motion, without table of contents and table of authorities, the court will strike that opposition. For any pleading exceeding 10 pages in length, the court requires a table of contents and table of authorities.

5. 12-38024-A-7 MOHAMMED/LINNA AHRARI — COUNTER MOTION TO STRIKE OPPOSITION
WSS-2 — 10-28-13 [62]

Tentative Ruling: The counter motion will be denied in accordance with the ruling on the movant's related motion to convert. Docket 33.

6. 12-41741-A-7 RAR ENTERPRISES L.L.C. — MOTION TO SELL AND TO APPROVE COMPROMISE
HSM-2 — 9-27-13 [118]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is, where is and without representations or warranties the estate's interest in a liquor license and restaurant fixtures, equipment and furniture, located at the debtor's former place of business, to the debtor's former landlord, PPC Folsom Parkway, L.L.C..

As consideration for the assets, PPC will pay $15,000 to the estate and will reduce its alleged $40,000 chapter 11 administrative claim against the estate to $15,000. The trustee is asking the court to approve the sale and approve the agreement between the parties as a compromise. The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

Creditor Bob Peake opposes the motion, contending that the compromise is not in the best interest of the estate. Mr. Peake complains that just the liquor license has a value of $50,000 and that the "there are tens of thousands of dollars of products and equipment which clearly belonged to [the debtor] and to which PPC [] has no legitimate claim." Docket 125 at 2. He also complains that PPC violated the stay and refused to renegotiate the lease with the debtor. Mr. Peake urges the court to consider "levying heavy penalties and fines on PPC [] for their actions and violation."

The court gives no weight to Mr. Peake's opposition to this motion for several reasons.

First, the opposition is not supported by any admissible evidence, such as a declaration establishing the factual assertions in the opposition. For instance, the reference to "tens of thousands of dollars of products and equipment which clearly belonged to [the debtor]" is not supported by

admissible evidence. Such statements are inadmissible hearsay and Mr. Peake has not even established his personal knowledge to testify as to such matters. Fed. R. Evid. 802 and 602. Each of the exhibits attached to the opposition are also hearsay. Fed. R. Evid. 802. The photos in Exhibit B to the opposition are also inadmissible because there is no declaration establishing their authenticity.

Second, the trustee is not selling the subject property for $15,000. He is selling it for $15,000 plus a $25,000 reduction of PPC's chapter 11 administrative claim.

Third, the opposition's reference to purported misconduct by PPC is not helpful or relevant here, even if those statements were admissible and established, as this motion does not address or attempt to resolve any misconduct of PPC.

Fourth, even if the statements in the opposition were admissible, they do not establish that the proposed purchase price of $15,000 plus the reduction of a junior administrative claim by $25,000 is not reasonable consideration for the assets being sold.

More, Mr. Peake ignores the reality that the trustee has been unable to obtain a higher purchase price for the property being sold. Mr. Peake also ignores the fact that PPC has asserted an ownership interest in the assets being sold, including the fixtures, equipment and furniture. Thus, in the disposal of the motion, the trustee is avoiding the necessity for litigation with PPC to establish the estate's interest in the property being sold.

Fifth, the motion provides that the proposed sale is subject to overbids. Hence, assuming the trustee may sell the property to an over-bidder without regard to PPC's competing ownership claims to the property, this is a public sale allowing Mr. Peake and anyone else interested to overbid for the property. This means that by the instant motion the trustee is attempting to sell the property for the highest possible purchase price. The only caveat for prospective over-bidders is that they must follow the overbidding procedure outlined by the trustee.

Turning to the merits of the sale and compromise, 11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate and will reduce $25,000 from an administrative expense claim.

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 sale is not approved free and clear of liens. The court will waive the 14-day period of Rule 6004(h).

The court will approve the agreement between the trustee and PPC also as a compromise.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors

with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the competing claims to the property being sold, given the $25,000 reduction of PPC's chapter 11 administrative expense claim, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

7.	13-33046-A-7 HDG-1 AMERICA'S CHRISTIAN CREDIT UNION VS.	TESS SIAT	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-17-13 [17]

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

The movant, America's Christian Credit Union, seeks relief from the automatic stay as to a real property that appears to have been used as a church, in Vallejo, California. The movant seeks relief from stay for cause under 11 U.S.C. § 362(d)(1) because the property was sold in foreclosure about 27 minutes before the instant petition was filed, at 11:07 a.m. on October 7, 2013. The movant also seeks relief from stay under 11 U.S.C. § 362(d)(4).

The court does not need to grant stay relief under 11 U.S.C. § 362(d)(1) because the case was dismissed October 25, 2013 and the stay was dissolved upon dismissal of the case. 11 U.S.C. § 362(c)(2)(B).

As to 11 U.S.C. § 362(d)(4), it provides that:

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

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

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

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

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is no longer "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant is the owner of the property. According to the trustee's deed upon sale attached to the motion, the movant purchased the property at the pre-petition foreclosure sale. Docket 23, Ex. E; Docket 20, Menchaca Decl. at 2. The movant then is no longer owed a debt secured by the property.

In rem relief will be denied under 11 U.S.C. § 105 as well as such relief requires an adversary proceeding. Johnson v. TRE Holdings L.L.C. (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

8. 11-49447-A-7 DMB-4 — ROBIN/SHANNON FOX — MOTION TO SELL 9-23-13 [40]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $15,000 the estate's interest in a real property in Chico, California to the Ralph and Mary Tetreault Revocable Living Trust.

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.

The property being sold is 1429 Martin Street Chico, California, but there is no such property listed in the schedules. Subject to the trustee clarifying why the property is not listed in the schedules and whether the property is subject to encumbrances, the court will approve the sale. The sale will be conditionally approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

9. 12-36347-A-7 PA-10 — ARNOLD THREETS AND TESSA BANUELOS-THREETS — OBJECTION TO EXEMPTIONS 10-2-13 [146]

Tentative Ruling: The objection will be sustained.

The trustee objects to the debtors' exemption claim in their 2012 tax refund. The exemption is claimed in "8.2333% of 2012 tax refund" and it is pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). Docket 132.

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 September 2, 2013. Docket 132. This objection was filed on October 2.

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), superseded by statute on other grounds, In re Salgado-Nava, 473 B.R. 911, 916 (9th Cir. B.A.P. 2012); 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).

Preliminarily, the court notes that the exemption is claimed solely in 8.233% of the debtors' 2012 tax refund. Docket 132. "8.233% of 2012 tax refund" is

the asset being exempt in the Amended Schedule C. This means that the remaining 91.767% of the refund is not being claimed as exempt. The amount of the exemption in the Amended Schedule C, $10,693, reflects only the maximum exemption in the asset claimed as exempt. Thus, the exemption is in 8.233% of the refund, up to $10,693.

Turning to the merits of the objection, the court will sustain it because the exemption has been claimed in bad faith.

The debtors filed this case on September 7, 2012. The Schedule B filed on the petition date did not list their 2012 tax refund as an asset. On November 20, 2012, the debtors amended their Schedules B and C, increasing the value of their district court litigation against the City of Richmond from $1.00 to $17,345. Docket 31. The debtors also increased their exemption claim in the district court litigation from $1.00 to $17,345, pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). Docket 31. The debtors received their bankruptcy discharge on April 15, 2013. On the same date, they filed their 2012 tax returns, presumably prepared sometime earlier. Docket 158 at 4.

Sometime in June 2013, the trustee's counsel asked the debtors' counsel for their 2012 tax returns. On July 18, 2013, the trustee requested the debtors' 2012 tax returns in writing. The returns were provided to the trustee on August 27, 2013. The debtors' counsel was on vacation for two weeks between July 18 and August 27.

The tax returns reflect an aggregate refund in the amount of $12,987, consisting of $9,354 in federal tax refund and $3,633 in state tax refund. The debtors filed another set of amendments to their Schedules B and C on September 2, 2013, for the first time disclosing their 2012 tax refund and claiming the above-mentioned exemption in the refund. Docket 132.

The debtors argue that they did not conceal the refund because when they filed for bankruptcy they did not know if and to what extent they would receive a refund. They also argue that the trustee never asked them for the 2012 refund prior to June 2013. They contend that they cooperated with the trustee in every respect.

The court is not persuaded that the debtors did not conceal the refund.

The trustee has produced sufficient evidence to rebut the presumptive validity of the exemption. That evidence is the failure to disclose the refunds until the trustee asked for the refunds, even after the debtors knew how much in refunds they would receive.

On the other hand, the debtors have not met their burden "to come forward with unequivocal evidence to demonstrate that the exemption is proper." The only declaration in support of the opposition, Docket 158, admits that the debtors filed their 2012 tax returns on April 15, 2013, but says nothing about why they amended Schedule B to disclose the refunds only on September 2, 2013, over 4.5 months later, and only after the trustee asked for the refunds several times.

The court is persuaded that the trustee has carried his ultimate burden of persuasion in establishing that the exemption is improper.

Whether or not the debtors knew that they would receive a tax refund is not helpful to excuse their failure to list the asset in the schedules at the time of filing.

11 U.S.C. § 541(a) provides: "The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Property of the estate then includes contingent legal or equitable interests in property. Question 21 of Schedule B filed by the debtor specifically asks the debtor to disclose "Other contingent and unliquidated claims of every nature, including tax refunds."

The foregoing is consistent with Ninth Circuit case law. "Under the Act, a contingent interest Tax returns must be filed by all individual debtors and all bankruptcy lawyers know or should know that tax refunds - subject to the interest of the bankruptcy estate - may be forthcoming post-petition. The court understands that the debtors may not have known on the petition in personal property passed to the trustee only if it was capable of being assigned or was subject to execution, seizure, or sequestration. 4A Collier on Bankruptcy ¶ 70.37 at 453 (14th ed. 1978). However, the requirement that the debtor must be able to transfer the interest or that his creditors by some means must be able to reach it has been eliminated under the Code. 4 id. ¶ 541.08[1] (15th ed. 1984). By including all legal interests without exception, Congress indicated its intention to include all legally recognizable interests although they may be contingent and not subject to possession until some future time. H.R.Rep. No. 595, 95th Cong., 1st Sess. 175-76 (1977), reprinted in 1978 U.S.Code Cong. & Ad.News 5963, 6136. We therefore conclude that Ryerson's interest in the 'contract value,' albeit contingent at the time of filing and not payable until such time as his appointment is terminated or cancelled, is includable within the bankruptcy estate pursuant to section 541(a)(1)." Rau v. Ryerson (In re Ryerson), 739 F.2d 1423, 1425 (9th Cir. 1984) (addressing post-petition contingent payments received pursuant to an employment contract that existed when the petition was filed). Ryerson indicated that 11 U.S.C. § 541(a)(6) partially codifies the Segal v. Rochelle, 382 U.S. 375 (1966) test for whether post-petition payments are property of the estate, to the extent of whether such payments are "sufficiently rooted in the pre-bankruptcy past").

However, the contingent nature of the asset does not excuse the failure to disclose the asset. All individual debtors can claim - for one reason or another - that they do not know whether and to what extent they will receive a tax refund next year. That is why Question 21 on Schedule B specifically includes tax returns under the rubric of "contingent and unliquidated claims" and that is why assets are often disclosed with a value of "$1.00" or "unknown."

The debtors obviously did not know what, if anything, the district court litigation against the City of Richmond would generate for them. Yet, this did not stop them from listing the asset on their Schedule B, filed on the petition date, with a value of $1.00, and then exempting the asset.

Once the debtors had a better perspective on what they could expect from the district court litigation, they increased the value of the litigation 2.5 months later to $17,345 and exempted the full value of it. Docket 31.

However, the debtors did not treat their 2012 tax refunds in the same way.

Further, the opposition is clear that the debtors filed their 2012 tax returns on April 15, 2013, they prepared the returns sometime prior to that date and

that they did not ask for an extension to file the returns. Docket 158 at 4. "Debtors point out that, had they exercised their right to file for an extension for the filing of their 2012 tax return, the return would not even have been due until October 15, 2013." Docket 157 at 5.

Hence, even if the debtors did not know on the petition date whether and to what extent they would receive refunds, they knew that they were receiving $12,987 in refunds sometime prior to April 15, 2013, when they prepared the 2012 returns. Nevertheless, the debtors did nothing to amended their schedules to disclose the refunds.

Rather, they waited until the trustee asked for the returns in June, July and August 2013, and made it clear to the debtors that he is asserting an interest in the refunds, to disclose and claim an exemption in the refunds.

The debtors complain that the trustee never asked for the 2012 refunds prior to June 2013, as if it is the trustee's obligation to prompt the debtors to disclose assets. The law is clear that the debtors have the continual obligation to disclose assets.

"The Bankruptcy Code and Rules 'impose upon the bankruptcy debtors an express, affirmative duty to disclose all assets, including contingent and unliquidated claims.' [In re Coastal Plains, 179 F.3d 197, 207-208 (5th Cir. 1999); Hay v. First Interstate Bank of Kalispell, N.A. (In re Hay), 978 F.2d 555, 557 (9th Cir. 1992)]; 11 U.S.C. § 521(1). The debtor's duty to disclose potential claims as assets does not end when the debtor files schedules, but instead continues for the duration of the bankruptcy proceeding. In re Coastal Plains, 179 F.3d at 208; Youngblood Group v. Lufkin Fed. Sav. & Loan Ass'n, 932 F.Supp. at 867; Fed. R. Bankr. P. 1009(a) (schedules may be amended as a matter of course before the case is closed)."

Hamilton v. State Farm Fire & Casualty Co., 270 F.3d 778, 785 (9th Cir. 2001); see also Chanthavong v. Aurora Loan Services, Inc., 448 B.R. 789, 797 (E.D. Cal. 2011).

Debtors have a continuing duty to disclose assets and changes in assets by amending their schedules. See Searles v. Riley (In re Searles), 317 B.R. 368, 377-78 (B.A.P. 9th Cir. 2004); see also 11 U.S.C. §§ 521(1), 541(a)(7).

The duty was on the debtors to disclose the refunds and not on the trustee to ask for the refunds. The debtors did not disclose the refunds when they filed the petition and they did not disclose them when they prepared the 2012 tax returns for filing, sometime prior to April 15, 2013. If the trustee had not asked for the returns and inquired about the refunds, making it clear that he is asserting an interest in the refunds, the debtors would not have disclosed them. The court infers then that the debtors had the intent not to disclose the refunds. It infers this from the fact that they did not amend their schedules for over 4.5 months after the returns were filed on April 15, 2013, and only after the trustee had asked for the refunds several times.

Importantly, even if the debtor's concealment of the refunds 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.

The fact that the debtors may have cooperated with the trustee in other matters, including discovery propounded by the trustee, does not take away from

the debtors' failure to disclose a substantial asset until asked by the trustee. The debtors' obligations to cooperate with the trustee in the administration of the estate remain. See, e.g., 11 U.S.C. § 542(a).

The court concludes then that the exemption has been claimed in bad faith. It will be disallowed. The objection will be sustained.

10. 13-26551-A-7 MICHAEL HOLT — MOTION TO SELL
SLF-12 — 10-3-13 [130]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $799,950 the estate's interest in a real property in Ripon, California to Kevin and Heather Barnes. The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee also asks for approval of a 6% commission to the estate's real estate broker, Bob Brazeal.

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

The property is subject to outstanding property taxes in the approximate amount of $6,445 and a $175,000 exemption claim. The trustee has agreed to include a pool table on the property as part of the sale and has agreed to credit $8,000 to the buyers for closing costs, representing the necessity for replacement of a forced heat/air unit and compressor and the repairing of a Subzero refrigerator. Although the trustee is not yet aware of any other encumbrances against the property, he believes that there maybe a small amount of outstanding HOA dues, including a $250 processing fee, as well as a small amount for an outstanding water bill. The trustee anticipates that these amounts will not exceed $5,000. He will pay the outstanding taxes, HOA dues, and utilities from escrow.

The sale will generate substantial 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 sale is not approved free and clear of liens as all liens will be paid from escrow. The court will waive the 14-day period of Rule 6004(h). The court will also authorize the payment of the 6% commission to the estate's real estate broker.

11. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO AVOID JUDICIAL LIEN
DJH-10 — 10-21-13 [203]
VS. NATIONAL CREDIT CONTROL AGENCY

Tentative Ruling: The motion will be denied.

The debtors are asking the court to avoid the judicial lien of National Credit Control Agency, Inc. and Franklin Love on personal property with value of $16,546.30.

A judgment was entered against the debtors in favor of National Credit Control Agency, Inc. for the sum of $9,266.72 on April 29, 2009. The abstract of judgment was recorded with Sacramento County on July 13, 2009.

The motion will be denied as to Franklin Love, as he is only counsel for NCCA and is not a creditor.

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

There is no evidence of a lien on any of the debtors' personal property. The only evidence is that the respondent creditor recorded an abstract of judgment in Sacramento County. Recording of an abstract of judgment does not create a lien on personal property. This typically requires a filing the judgment with the California Secretary of State.

To the extent the debtors are asking the court to determine the respondent's interest in the property, this requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

12. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO AVOID JUDICIAL LIEN
DJH-11
VS. CHARTER ADJUSTMENTS CORPORATION — 10-21-13 [192]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to avoid the judicial lien of Charter Adjustment Corporation and Donald Sternberg on personal property with value of $16,546.30.

A judgment was entered against Debtor Joseph Cesar in favor of Charter Adjustment Corporation for the sum of $6,970.47 on November 6, 2009. The abstract of judgment was recorded with Sacramento County on March 8, 2010.

The motion will be denied as to Donald Sternberg, as he is only counsel for Charter Adjustments Corporation and is not a creditor.

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

There is no evidence of a lien on any of the debtors' personal property. The only evidence is that the respondent creditor recorded an abstract of judgment in Sacramento County. Recording of an abstract of judgment does not create a lien on personal property. This typically requires a recording with the California Secretary of State.

To the extent the debtors are asking the court to determine the respondent's interest in the property, this requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

13. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION TO DISALLOW DEBTORS' AMENDMENT TO SCHEDULE B
TDM-1 — 10-4-13 [167]

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

Creditor Wells Fargo Bank asks the court to disallow the latest amendment of Schedule B by the debtors.

The debtors had a loan with the movant that was secured by their real property in Carmichael, California. In 2009, the debtors defaulted on the loan and the movant started a foreclosure on the property. The property was sold at a foreclosure sale on April 16, 2010. The debtors were evicted from the property on July 7, 2010.

This bankruptcy case was filed on July 19, 2010. The debtors did not schedule any claims against the movant in the Schedule B that was filed on the petition date. The debtors received their chapter 7 discharge on November 16, 2010 and the trustee issued a report of no distribution on January 31, 2012. The case was closed on March 9, 2012. After the closure of the case, the trustee issued another report of no distribution, on April 18, 2012. On August 26, 2013, the debtors asked the court to reopen the case. The case was reopened on August 30, 2013. On September 24, 2013, the debtors filed an Amended Schedule B, disclosing for the first time causes of action against Wells Fargo Bank. Docket 162. It is this Amended Schedule B that is the subject of this motion.

The motion will be denied to the extent the movant argues that the debtors should have sought leave to amend their Schedule B, given that the case was previously closed and the debtors filed the last Amended Schedule B only after the case was reopened. Although the movant cites to In re Oster, 293 B.R. 242, 250 (Bankr. E.D. Cal. 2003), that case has been overturned on the exact point of law for which it is cited and the movant makes no effort to cite the case that overturned Oster, Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 391, 391 n.6, 392 (B.A.P. 9th Cir. 2003) (reversing a lower court because it relied on Oster for imposing a requirement of court approval for the amendment of Schedule C in a reopened case).

See also Weeden v. Rowland-Wong (In re Weeden), Case. No. EX-04-1380-MaSP, 2005 WL 6960220, at *3 (B.A.P. 9th Cir. Sept. 6, 2005).

"The bankruptcy court, in its Oster decision, held that debtors may not file amended schedules in a reopened case without court approval. 293 B.R. at 249–50. We disagree. There is no basis in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure for imposing such a requirement. If the drafters had intended to require court permission before the filing of amended schedules in reopened cases, they would have explicitly said so.

Rule 1009(a) states that the debtor has the absolute right to amend any 'list, schedule, or statement' prior to closure of the case. This right to amend includes the right to amend the debtor's list of property claimed exempt. In re Michael, 163 F.3d 526, 529 (9th Cir. 1998). '[F]or the purposes of filing amendments, there is no difference between an open case and a reopened case,

and [a debtor in a reopened case does] not need the court's permission to amend.' In re Boyd, 243 B.R. 756, 766 (N.D. Cal. 2000). See also In re Jordan, 276 B.R. 434, 438 (Bankr. N.D. Miss. 2000) (Rule 1009(a) applies in a reopened bankruptcy case)."

Goswami, 304 B.R. at 392-93 (footnotes omitted); see also In re Dougan, 350 B.R. 892, 895 (Bankr. D. Id. 2006).

Accordingly, the court will not strike the Amended Schedule B on the basis that the debtors did not seek leave to file it.

Nevertheless, this does not mean that there is no other basis for disallowing the amendment of Schedule B to disclose the claims against the movant.

"[T]he fact that a debtor in a reopened case may amend her schedules and claim additional exemptions does not mean she has an absolute right to amend." Dougan at 895 (citing Goswami at 393). "Even though Rule 1009(a) allows amendments without court permission 'as a matter of course at any time before the case is closed[,]' there is no absolute right to amend schedules in bankruptcy cases. '[J]udge-made exceptions' bar amendment if the debtor has acted in bad faith or if prejudice would result. In re Arnold, 252 B.R. 778, 784 (9th Cir. B.A.P. 2000). We see no reason to apply a different standard after a case has been reopened." Goswami at 393.

"Schedules may be amended to change claimed exemptions, or to add omitted assets . . . and is allowed in the absence of prejudice or bad faith." Cogliano v. Anderson (In re Cogliano), 355 B.R. 792, 802 (9th Cir. B.A.P. 2006) (citing Goswami, 304 B.R. at 393-94).

"The liberal policy in favor of allowing amendments must give way when the debtor has acted in bad faith or where creditors will be prejudiced by the delay in claiming the exemption. Goswami, 304 B.R. at 393; In re Hamilton, 93 I.B.C.R. at 229."

The court then may disallow a schedule amendment, before the case is closed or after it is reopened, if it concludes that such an amendment would cause prejudice to a creditor or the amendment is made in bad faith.

After this case was closed on March 9, 2012, the debtors filed a state court action against the movant on May 25, 2012, asserting state court claims pertaining to the movant's pre-petition eviction action and the pre and post-petition delay in recovering their personal property from the house on which the movant foreclosed. Although the debtors were evicted from the real property on July 7, 2010, they did not recover their personal property until after their bankruptcy case was filed. The movant gave the debtors access to the real property to retrieve their personal property for several days starting on July 30, 2010.

On June 15, 2012, the movant removed the state court action to federal district court, and subsequently filed a motion to dismiss, asserting judicial estoppel as one of the basis for dismissal. The district court remanded the case back to state court. On February 6, 2013, the movant demurred to the debtors' complaint, once again raising the issue of judicial estoppel. On April 9, 2013, the state court granted the movant's demurrer, but the court did not address the judicial estoppel argument.

The debtors made no effort to amend their bankruptcy schedules. Instead, on

May 31, 2013, they filed a first amended complaint. The movant demurred once again, on June 28, 2013. The debtors did not amend their Schedule B until September 24, 2013, the same day that the state court issued its tentative ruling granting the movant's demurrer on judicial estoppel grounds. The ruling on the demurrer was scheduled for September 25, while the state court's tentative ruling was issued on September 24 or before. Docket 173, Ex. 8.

Allowing the debtors to amend their Schedule B to include the claims against the movant would prejudice the movant and the bankruptcy trustee, who never had the opportunity to investigate the claims. The debtors have been asserting the claims against the movant since May 25, 2012. Those claims, to the extent they involve the movant's pre-petition conduct with respect to the debtors, were not disclosed in the debtors schedules until September 24, 2013, 38 months after the instant case was filed.

Further, allowing the debtors to amend Schedule B to disclose the claims nearly 16 months after they started their litigation against the movant prejudices the movant because it would have the effect of nullifying the movant's judicial estoppel defense, which the movant has been asserting against the debtors all along the litigation. See Docket 172, Ex. 3 at 2. Allowing the amendment of Schedule B to disclose the claims would deprive the movant of its judicial estoppel defense.

Importantly, allowing the amendment would mean also that only the debtors' bankruptcy estate would have standing to prosecute the pre-petition claims against the movant, unless and until such claims are abandoned back to the debtors. 11 U.S.C. § 554(c).

Further, besides causing prejudice to the movant, the September 24, 2013 amendment of Schedule B was in bad faith. Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004). "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 v. Gill (In re Arnold), 252 B.R. 778, 786 (B.A.P. 9th Cir. 2000). 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 disagrees with the debtors that they did not misrepresent facts in their schedules by failing to schedule the pre-petition claims against the movant.

First, blaming the failure to disclose the claims in the schedules on the debtors' prior counsel, who has been disbarred, is not helpful. The debtors chose their attorney and they are responsible for his actions, inactions, and

the decisions he makes or does not make on their behalf.

Second, the debtors' claims against the movant were not scheduled. Property listed in the statement of financial affairs does not qualify as "scheduled" property for purposes of 11 U.S.C. § 554(c), which provides that only "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." See In re Schmid, 54 B.R. 78, 80-81 (Bankr. D. Or. 1985) (indicating that assets referenced in the statement of financial affairs are not "scheduled" for purposes of 11 U.S.C. § 554(c)); Swindle v. Fossey (In re Fossey), 119 B.R. 268, 272 (D. Utah 1990) (citing Schmid for the same proposition).

The court agrees with the foregoing cases as neither trustees, nor creditors search for assets in the debtors' statement of financial affairs or elsewhere outside the schedules. Assets are required to be listed only in Schedules A and B. Thus, neither trustees, nor creditors should be held accountable for assets listed in a remote corner of the bankruptcy petition documents.

More, even if the listing of assets in the statement of financial affairs or the statement of intention were somehow sufficient disclosure of the assets, the debtors did not sufficiently reference the claims against the movant in those statements.

In item 4 of the statement of financial affairs, the debtors list only the movant's eviction action against them. Under the "status or disposition" of the action, they state "[e]victed subject to [o]verall [p]laintiffs (Cesars) [c]omplaint to be filed." Docket 1. Arguably, this is a reference to claims the debtors have against someone pertaining to the eviction. But, there is no reference to the defendant against which the complaint would be filed and there is no reference to the nature of the claims that would be asserted in that complaint. The movant is not the only possible defendant to an action after foreclosure and eviction of the debtors.

The reference to the claims against the movant in the September 10, 2010 amended statement of intention is even less conspicuous. It lists the real property, it lists the movant as the respective creditor and, for their intent, the debtors state "[c]ontinue [l]itigation." Once again, there is no reference to what litigation, against whom, what is the nature of the claims, etc.

The court notes also that the references in the two statements are conflicting in that one refers to continuing seemingly existing litigation, while the other refers to filing a complaint in the future. The court realizes that one statement was made on the petition date, July 19, 2010, whereas the other was made on September 10, 2010. On one hand, the debtors' dispute with the movant over the eviction had been ongoing between their pre-petition eviction from the property on July 7, 2010 and the filing of the amended statement of intention on September 10, 2010. On the other hand, the claims against the movant were not filed until May 25, 2012, nearly 20 months later.

Overall, the references to the claims in the statements was insufficient disclosure.

Third, from the fact that the debtors did not schedule the claims against the movant until nearly 16 months after they started their litigation against the movant (May 25, 2012 until September 24, 2013), the court infers that the debtors were attempting to avoid involving a chapter 7 trustee in the litigation. It was not until the state court ruled against them on the

judicial estoppel issue that they found it necessary to disclose the claims in the schedules.

Whether for litigation convenience purposes or as an affirmative attempt to prevent the estate from administering a valuable asset, the debtors were clearly intent on avoiding disclosure of the claims in the bankruptcy case, even after the movant raised the judicial estoppel issue with the debtors in June 2012. Docket 172, Ex. 3 at 2. Hence, the court is persuaded that the debtors had the intent to conceal the claims.

However, even if the debtors did not have such intent, the court still concludes that the amendment to Schedule B was filed in bad faith. Such intent is not required for this court to conclude that bad faith exists. 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 claims against the movant, to the extent they involve the movant's pre-petition conduct with respect to the debtors, were not disclosed in the debtors schedules until September 24, 2013, 38 months after the instant case was filed. As a result, the bankruptcy trustee never had the opportunity to investigate the claims, while the debtors have had free reign in litigating the claims. This has prejudiced the estate, in depriving the trustee from investigating the claims while the facts underlying the claims were still fresh in the memories of the parties and witnesses. This is another basis for bad faith.

Other bases for bad faith here is finality and the debtors' intent solely to avoid a defeat in a state court litigation. Bankruptcy cases, and especially chapter 7 cases, should have finality in the administration of assets and the litigation of claims. Chapter 7 debtors should not have the option of reopening their chapter 7 case 38 months after it started to amend schedules, in an attempt to avoid a defeat in litigation they started but did not disclose in the bankruptcy. This is especially true where there is no interest from the U.S. Trustee in administering the claims. There has been no interest from the U.S. Trustee in seeking the appointment of a new chapter 7 trustee or in the administration of the claims against the movant.

Therefore, the September 24, 2013 amendment of Schedule B will be disallowed on the basis of bad faith. This part of the motion will be granted.

Finally, in deciding this motion, the court is not determining the merits of the movant's judicial estoppel defense and is not determining whether and to what extent the debtors' claims against the movant are pre or post-petition claims. These issues are for the state court to address and decide.

14. 13-29877-A-7 PHYLLIS WILKINS — MOTION TO DISMISS CASE 9-30-13 [29]
UST-1

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

The U.S. Trustee seeks dismissal, arguing that the debtor's debts are primarily consumer debts, pursuant to 11 U.S.C. § 707(b)(1), and that the presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) because her monthly disposable income is $1,504.51. This amount exceeds the statutory threshold of $207.92.

In the alternative, the U.S. Trustee seeks dismissal under 11 U.S.C. § 707(b)(3) because the debtor is able to pay a significant portion of her unsecured debt.

Both the trustee and the debtor have filed non-opposition to the motion.

11 U.S.C. § 707(b)(1) provides that, after notice and a hearing, on its own motion or on a motion by the U.S. Trustee, the court may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it concludes that the granting of chapter 7 relief would be an abuse of the chapter 7 provisions.

A presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) when a debtor's current monthly income, reduced by the amounts permitted by subsections (ii), (iii), and (iv) of 11 U.S.C. § 707(b)(2)(A), and multiplied by 60, is no less than the lesser of 25% of the debtor's non-priority unsecured claims or $7,475, whichever is greater, or $12,475. See 11 U.S.C. § 707(b)(2)(A)(I), as amended by 78 F.R. 12089.

In other words, if after deducting all allowable expenses from a debtor's current monthly income, the debtor has less than $124.58 in net monthly income (*i.e.*, less than $7,475 to fund a 60 month plan), a chapter 7 petition is not presumed abusive. If the debtor has monthly income of more than $207.92 (or $12,475) to fund a 60-month plan, a chapter 7 petition is presumed abusive. And, if the debtor has between $124.58 and $207.92 of monthly disposable income, a presumption of abuse exists if that sum, when multiplied by 60 months, will pay 25% or more of the debtor's non-priority unsecured debts.

In the alternative, 11 U.S.C. § 707(b)(3) provides that the court can determine the existence of abuse under 11 U.S.C. § 707(b)(1) by considering (A) whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances of the debtor's financial situation demonstrates abuse.

11 U.S.C. § 707(b)(2)(A) and 11 U.S.C. § 707(b)(3) are mutually exclusive for purposes of determining whether the granting of chapter 7 relief would be an abuse of the chapter 7 provisions.

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8).

A review of the debtor's petition documents shows that her debts are primarily consumer debts. A review of Schedule D shows that the collateral for the debtor's two secured debts is a real property and a vehicle. Schedule F lists debt from one outstanding AT&T bill, seven credit cards and two credit lines. The court concludes that the debtor's debts were incurred mainly for a personal, family or household purpose.

Finally, as the debtor's monthly disposable income under 11 U.S.C. § 707(b)(2) is $1,504.51, exceeding the statutory threshold of $207.92, the court concludes that there is presumption of abuse under 11 U.S.C. § 707(b)(2). Docket 1. The debtor has not rebutted that presumption, nor has she requested conversion of the case to chapter 13. The motion will be granted and the case will be dismissed. It is unnecessary to address other grounds for dismissal.

15. 13-31288-A-7 CORY/DANA GLINES — MOTION TO DISMISS CASE
EJS-1 — 9-24-13 [9]

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

The debtors are asking the court to dismiss their case in order for them to re-file when they are both eligible to receive a chapter 7 discharge.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

11 U.S.C. § 727(a)(8) provides that "(a) The court shall grant the debtor a discharge, unless . . . (8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition."

Mr. Glines forgot prior to the filing of this case on August 28, 2013 that he had filed a prior chapter 7 case on September 20, 2005 and received discharge in that case. This case then was filed 23 days short of the eight-year period prescribed by 11 U.S.C. § 727(a)(8). As the debtors wish to refile for bankruptcy so they can both receive a discharge, there is cause for dismissal of this case. The motion will be granted.

16. 12-29790-A-7 TROY/JENNIFER MALLICOAT — MOTION TO APPROVE COMPROMISE
TGM-3 — 10-14-13 [52]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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 trustee requests approval of a settlement agreement between the estate on one hand and the debtors and the trustees of a family trust on the other, resolving a dispute over the estate's interest in the debtors' interest in the trust assets.

The facts giving rise to this motion are as follows. Danny Mallicoat, the father of Debtor Troy Mallicoat, agreed to sell 40 acres on Florin Road referenced above to John and David Saca in May 1995. As part of the sales agreement, Danny Mallicoat retained a right for the reconveyance of five acres from the 40-acre property, free and clear of interests, back to Danny Mallicoat. The sales agreement provided for liquidated damages in the event the Sacas breached their obligation to reconvey the five acres. The reconveyance was to take place on or before June 3, 2000. But, the reconveyance was extended several times, first to June 3, 2002, then to

September 30, 2006, September 30, 2008 and is now extended to September 30, 2016. The trustee disputes that the trustees had the authority to agree to the extensions.

In 2001, Danny Mallicoat established the Danny L. Mallicoat Revocable Living Trust, Dated November 15, 2001. He transferred all his property into the trust. Danny Mallicoat was the settlor, initial trustee and beneficiary under the trust, during his lifetime. Danny Mallicoat passed away in February 2004. Debtor Troy Mallicoat and Danny Mallicoat's former spouse, Dolores Mallicoat, became co-trustees of the trust.

The debtors have been living on a part of the 40-acre property for over eight years. Neither they, nor the trust has been paying rent or any property taxes. The trust borrowed $14,000 from the Sacas to cover the cost for the removal of an underground diesel tank from the part of the property where the debtors live. Apparently, the trust and the Sacas agreed to the waiver of the liquidated damages provision, as relating to the reconveyance of the five acres, given the trust's failure to repay the $14,000 loan to the Sacas.

One of the purported reasons for the extensions given to the Sacas about the reconveyance of the five acres has been the desire by both the Sacas and the Mallicoats to sell all 40 acres of land as one parcel. The rising real property values in the Sacramento Area during the 2000s encouraged the Sacas and the Mallicoats to keep all 40 acres of land together. The property was in escrow twice. The last time it was in escrow was in 2005. DR Horton was to purchase the property for $24 million. The trust was due to receive one-eight interest from the net sale proceeds. Neither of the sales were completed, however.

Debtors Troy and Jennifer Mallicoat filed this case on May 22, 2012. Their discharge was entered on September 4, 2012.

The trustee has taken the position that the debtors' interest in the trust and property of the trust belongs to the estate. She has requested that the trust distributes the trust property due the debtors to her, for the benefit of the bankruptcy estate.

The debtors and the trust trustees dispute that the bankruptcy estate has interest in the trust assets. They have asserted also that a spendthrift provision in the trust prevents the bankruptcy trustee from forcing a distribution of trust property. In addition, the debtors have asserted an exemption claim for $2,621 under Cal. Civ. Proc. Code § 703.140(b)(5) in the trust assets.

Under the terms of the settlement, the debtors and/or the family trust will pay $50,000 to the estate in full satisfaction of the estate's interest in the trust and trust assets. In addition, the debtors have agreed to limit their exemption claim in the trust to $2,621 and not to amend or alter that claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors

with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the relative complexity of the legal issues involved in recovering assets from the trust, given that the trust holds real property which would have to be sold for the benefit of several beneficiaries under the terms of the trust, given the required additional litigation in order for the trustee to force a distribution of the trust assets, and given the inherent costs, risks, delay and inconvenience of any such further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

17. 12-39092-A-7 SCOTT/JULIANNE DOUSHARM — MOTION FOR RELIEF FROM AUTOMATIC STAY
NMB-1
DEUTSCHE BANK NATIONAL TRUST CO. VS. — 10-14-13 [27]

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

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

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

Given the entry of the debtor's discharge on February 27, 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 $95,000 and it is encumbered by claims totaling approximately $288,177. The movant's deed is in first priority position and secures a claim of approximately $241,772.

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 October 16, 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.

THE FINAL RULINGS BEGIN HERE

18. 13-29609-A-7 LAWRENCE GRZELAK AND MARI NOSS
NATIONSTAR MORTGAGE, L.L.C. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-13 [29]

Final Ruling: The motion will be denied without prejudice 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: "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, the motion does not include a docket control number in violation of Local Bankruptcy Rule 9014-1(c). This makes it difficult for the court to identify all the papers filed in connection with the motion.

19. 12-30911-A-7 VILLAGE CONCEPTS, INC.
DNL-5
MOTION TO EMPLOY
10-7-13 [200]

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

The motion will be granted.

The trustee requests approval to employ Desmond, Nolan, Livaich & Cunningham as counsel for the chapter 7 estate. DNLC was counsel for the chapter 11 trustee before the case was converted from chapter 11. DNLC will assist the chapter 7 trustee with the overall administration of the debtor's chapter 7 estate. The proposed compensation arrangement is a hybrid between a contingency compensation for prosecution of avoidance claims and hourly compensation for all other services. Ex. B to Motion at 1. The contingency portion of the compensation arrangement includes a 25% contingency fee for recovery obtained prior to commencement of suit, 33% fee of recovery obtained within 30 days before trial, and 40% fee of recovery obtained thereafter.

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

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

20. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO EMPLOY
DNL-6 10-7-13 [205]

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 debtor in possession requests approval to employ Douglas & Company, Inc. as accountant for the estate, effective September 7, 2013. D&C will prepare tax returns and perform tax-related accounting services for the estate. The proposed compensation is based on an hourly fee arrangement.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. D&C is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Its employment will be approved effective September 7, 2013.

21. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO APPROVE COMPENSATION FOR ACCOUNTANT (FEES 1,963.31)
DNL-7 10-7-13 [210]

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.

Douglas & Company, Inc., accountant for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of $1,963.31 in fees and $0.00 in expenses. This motion is for services performed on September 10, 2013. Although the court has not signed the order approving the movant's employment, its employment has been approved.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included preparing tax returns, reviewing a ledger and various balance sheet accounts, reconciling earnings from prior year, communicating with the debtor's principal, adjusting journal entries, preparing various federal and California forms, and providing other general tax services to the trustee.

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

22. 13-30311-A-7 KATHERINE GERRARD — ORDER TO SHOW CAUSE 10-18-13 [58]

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

This order to show cause was issued because the debtor filed a Notice of Conversion on September 29, 2013, but did not pay the $25 filing fee. However, the debtor paid the fee on October 29, 2013. No prejudice has resulted from the delay.

23. 13-27715-A-7 CALIFORMACY INC. — MOTION TO ABANDON 10-4-13 [83]
MDM-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 U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee wishes to abandon the estate's interest in a One (1) Script Pro Pharmacy Automation SP 200 machine, which dispenses prescription drugs.

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.

While the machine has a value of approximately $30,000 to $40,000, the trustee has not received any offers for the purchase of machine, even though he has advertised the machine for sale. More, the cost of dismantling and

reinstalling the machine is $13,000 and $30,000, respectively.

Given the cost of dismantling and reinstalling the machine and given the absence of offers for purchase of the machine, the court concludes that the machine is of inconsequential value to the estate. The motion will be granted.

24. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO CONVERT CASE TO CHAPTER 13
PK-3 — 10-4-13 [100]

Final Ruling: The hearing on this motion has been continued to November 18, 2013 at 10:00 a.m. Docket 119.

25. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO EXTEND DEADLINE
SLF-7 — 9-23-13 [94]

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

The motion will be granted.

The trustee requests a 91-day extension, from September 23, 2013 to December 23, 2013, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because the debtors have hindered and delayed the trustee's administration of the estate.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was September 23, 2013. The motion was filed on September 23, 2013. Thus, the motion complies with the temporal requirements of the rule.

The trustee has discovered that the debtors misrepresented the value of assets in their schedules, including real property, a vehicle and firearms. Additionally, the debtors have failed to disclose all their property in the schedules and have refused to turn over property of the estate to the trustee. The trustee needs additional time to administer assets and investigate the debtors' affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to December 23, 2013.

26. 13-30531-A-7 JEWELL WONG — ORDER TO SHOW CAUSE
10-11-13 [20]

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

remain pending.

This order to show cause was issued because the debtor filed an Amended Master Address List on October 2, 2013, but did not pay the $30 filing fee. However, the debtor paid the fee on October 15, 2013. No prejudice has resulted from the delay.

27. 12-27739-A-7 DIANA PHAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $3,000) 10-7-13 [195]
SLF-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.

The Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,000 in aggregate fees and expenses, reduced from $6,649 in fees and $162.17 in expenses. This motion covers the period from December 19, 2012 through the present. The court approved the movant's employment as the trustee's attorney on January 2, 2013. In performing its services, the movant charged hourly rates of $195, $225, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the abandonment of a real property, the gas station and convenience store business conducted on the property, and the gasoline and store inventory; (2) preparing and prosecuting a motion for the setting of an administrative claims bar date, (3) negotiating a settlement with the debtor's gas supplier about the post-petition transfer of funds to the supplier, (4) obtaining court approval of the settlement, and (5) preparing and filing employment and compensation motions.

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

28. 13-25844-A-7 LEVI/KIMBERLEE DELANEY — MOTION TO REDEEM 9-18-13 [45]
DBJ-4

Final Ruling: The hearing on this motion was continued to December 16, 2013 at 10:00 a.m. Docket 56.

29. 13-29645-A-7 EMMA SOLIS

MOTION TO CONFIRM TERMINATION OF STAY
9-30-13 [18]

Final Ruling: The motion will be denied without prejudice 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: "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, the motion does not contain a docket control number in violation of Local Bankruptcy Rule 9014-1(c), making it difficult for the court to identify all the papers filed in connection with the motion.

30. 11-49447-A-7 ROBIN/SHANNON FOX
DMB-5

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $1,180, EXP. $635)
9-23-13 [45]

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

Jacobs, Anderson, Potter & Chaplin, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,180 in fees and $635 in expenses, for a total of $1,815. The requested compensation covers the period of January 9, 2012 through July 13, 2013. The court approved the movant's employment as the trustee's special counsel on January 27, 2012. The court entered an amended order approving the movant's employment on September 24, 2013. The movant charged an hourly rate of $200.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the recovery of a nonexempt assets for the benefit of the estate. The property recovered appears to have been a real property.

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

31. 13-32759-A-7 ARTURO GOMEZ AND VALERIE MOTION FOR
VVF-1 VIZGAUDIS RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP. VS. 10-10-13 [9]

Final Ruling: The movant has provided only 25 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed without prejudice.

32. 10-38965-A-7 JOSEPH/LATSAMY CESAR MOTION FOR
DJH-06 SANCTIONS
8-26-13 [73]

Final Ruling: The hearing on this motion was continued to December 16, 2013 at 10:00 a.m. Docket 210.

33. 13-28082-A-7 LINDSEY JOHNSON MOTION FOR
EAT-1 RELIEF FROM AUTOMATIC STAY
NATIONSTAR MORTGAGE VS. 10-2-13 [41]

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

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

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Rancho Cordova, California.

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

As to the estate, the analysis is different. The property has a value of $225,000 and it is encumbered by claims totaling approximately $286,515. The movant's deed secured a claim in first priority position, of approximately $249,016.

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 25, 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.

34. 12-36595-A-7 ADRIAN/LISA ROGERS
DMB-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $1,472.50, EXP. $25)
10-4-13 [66]

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

The motion will be granted.

Law Office of Cowan & Brady, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,472.50 in fees and $25 in expenses, for a total of $1,497.50. This motion covers the period from May 24, 2013 through August 21, 2013. The court approved the movant's employment as the trustee's attorney on May 29, 2013. The court also entered an amended order for the employment of the movant on October 2, 2013. In performing its services, the movant charged hourly rates of $100 and $325.

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

included, without limitation: (1) assisting the estate with the recovery of a nonexempt real property, (2) assisting the estate with the sale of the property; and (3) 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.

35. 10-46597-A-7 ROBERT/REBECCA WHITE — MOTION TO AVOID JUDICIAL LIEN
NSN-1
VS. VION HOLDING, L.L.C. — 10-21-13 [36]

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 Vion Holding, 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."

Also, while the debtor served Vion's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).