UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 18, 2013 at 10:00 a.m.

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

1, 2, 7, 10, 11, 12, 15, 21, 22, 24, 25

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 16, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 2, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 9, 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. 13-31802-A-7 CHRISTOPHER/RAQUEL NOCON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AXL-9 — 10-31-13 [13]
CARMEL CAPEHART, L.L.C. VS.

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

The motion will be granted.

The movant, Carmel Capehart, L.L.C., seeks retroactive relief from the automatic stay to validate a three-day notice to pay or quit served on the debtor after defaulting on lease payments for an apartment property in Antelope, California. In addition, the movant seeks prospective relief from stay to obtain possession of the property, as necessary, under state law.

The movant's principal is the legal owner of the property and the debtor leased the property. The debtor defaulted under the lease agreement and the movant served the debtor with a three-day notice to quit on September 9, 2013. Unbeknown to the movant, the debtor had filed this case on September 7, 2013. The movant first learned of the bankruptcy filing on September 12, 2013. The debtor has vacated the property as of approximately October 9, 2013. Docket 15.

The fact that the movant did not know of the bankruptcy does not mean that there was no automatic stay when the notice to pay or quit was served on the debtor. There is no exception in 11 U.S.C. § 362(a) for the effect of the automatic stay, depending on whether a creditor knows of the bankruptcy filing. The automatic stay exists whether or not a creditor is aware of the bankruptcy filing.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The movant did not know about the bankruptcy filing when it served the debtor with the notice to pay or quit on September 9. The movant learned of the bankruptcy on September 12. And, had the movant applied for relief from stay before serving the notice on the debtor, the court would have likely granted it, given that the debtors did not own and were only leasing the property, and they had defaulted on their lease payments when the notice was served.

This is a liquidation proceeding and the debtor has no interest in the property as the debtor does not own the property and has defaulted on the lease agreement with the movant.

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1). Retroactive relief from the automatic stay will be granted only with respect to the movant's service of the notice to pay or quit on September 9, 2013. The supporting declaration does not describe any other action taken by the movant post-petition against the debtor in violation of the stay.

The movant may obtain possession of the property in accordance with state law and to the extent necessary. But, no monetary claim may be collected from the debtor or the estate. The movant is limited to recovering possession of the property.

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

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

2. 10-47509-A-7 ELIZABETH MARTIN
HSM-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $13,881.75, EXP. $135)
10-23-13 [74]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $13,881.75 in fees and $135 in expenses, for a total of $14,016.75. This motion covers the period from December 10, 2010 through the present. The court approved the movant's employment as the trustee's attorney on January 25, 2011. In performing its services, the movant charged hourly rates of $275, $295, $350, $360 and $380.

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) analyzing the estate's remainder interest in real property, (2) opposing the debtor's request for abandonment of the property, (3) negotiating a sale of the estate's interest in the property, (4) obtaining approval of the sale, (5) advising the trustee on issues pertaining to the debtor's discharge and exemptions, (6) researching exemption issues and

preparing an objection to an amended exemption, (7) analyzing the recovery of possible fraudulent transfers, and (8) 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.

3. 13-30311-A-7 KATHERINE GERRARD — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $4,321.87, EXP. $14.73)
DMA-2 — 10-15-13 [49]

Tentative Ruling: The motion will be denied.

Alden Law Group, former attorney for the debtor, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,300 in fees and $0.00 in expenses. This case was filed as a chapter 13 case on August 4, 2013. A plan was never confirmed and the court granted a motion by the movant for withdrawal as counsel for the debtor on September 23, 2013, because the movant "and the debtor are unable to agree as to how the case should proceed, and the debtor will not cooperate in the prosecution of the case." Docket 32. The debtor retained another attorney and the case was converted to chapter 7 on September 29, 2013. Docket 33.

The requested compensation is based on a pre-petition fee agreement between the movant and the debtor. Under the agreement, the debtor agreed to pay the movant $3,800 for assistance with the chapter 13 case. Pre-petition, the debtor paid the movant $1,500 toward the agreed "no look" fee. The movant has received no other payments from the debtor.

The debtor opposes the motion, arguing that the services provided by the movant were inadequate, and seeking the court to order the movant to refund one-half of the $1,500 retainer the debtor paid to the movant.

The court does not grant relief based on the response to a motion. If the debtor wants the court to grant some relief, she should file her own motion.

The fee request here is based on a pre-petition flat fee agreement, meaning that the requested fee is a pre-petition debt that is dischargeable in this chapter 7 proceeding, where all pre-petition debt will be discharged, subject to 11 U.S.C. §§ 523 and 727. Thus, the motion will be denied.

Finally, the court makes no determination about the debtor's allegations as the factual assertions in the opposition are not supported by any evidence. The opposition is not supported by a declaration establishing its factual assertions.

4. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 10-21-13 [29]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, Federal National Mortgage Association, seeks relief from the automatic stay as to real property in Marysville, California.

The court notes that the property is not listed in the debtor's schedules. The only property listed in the two Schedules A filed by the debtor (Dockets 8 & 20) is a property in Olivehurst.

The subject property has a value of $179,900 and it is encumbered by claims totaling approximately $167,836. Docket 32, Ex. B. The movant's lien is the only encumbrance against the property. This leaves approximately $12,063 of equity in the property.

Given this equity, relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 1200, 1202 (11th Cir. 1995).

The movant has an equity cushion of approximately $12,063. This equity cushion is sufficient to adequately protect the movant's interest in the property until the case is administered and closed. The trustee filed a notice of assets on July 22, 2013. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied.

5. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO CONVERT CASE TO CHAPTER 13 10-4-13 [100]
PK-3

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtors, 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtors request conversion from chapter 7 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.

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

The court has reviewed the record and concludes that the debtors are not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtors have produced evidence that they will be amending Schedules I and J to reflect a net monthly income of $175. In addition, they will make four annual lump-sum payments of $7,105.13 under their proposed plan, to be funded from exempt retirement funds.

The debtors have noncontingent, liquidated secured debt in an amount less than $1,149,525 (actual amount is $371,706) and noncontingent, liquidated unsecured debt in an amount less than $383,175 (actual amount is $192,300). Given the foregoing, the court concludes that the debtors are eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted. The debtors shall file their Amended Schedules I and J within two days of the November 18, 2013 hearing on this motion. The granting of this motion does not warrant or confirm that the debtors' chapter 13 plan filed with the motion is confirmable.

6. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO RECONSIDER 10-25-13 [121]
SLF-6

Tentative Ruling: The motion will be denied.

The debtors are asking the court to reconsider its October 14, 2013 order granting the trustee's motion to compel the turnover of a rental real property. Dockets 109 & 115. The basis for the motion is that "[i]f the [t]rustee sells the rental residence before the [d]ebtor's motion to [c]onvert is heard, irreparable harm will occur to [d]ebtors in the event the [c]ourt grants their motion to convert." The debtors are asking the court to "condition th[e] granting of [t]rustee's motion for turnover until November 18, 2013." Docket 121 at 2.

First, the motion will be denied because it was not served on the trustee's counsel, Dana Suntag.

Second, the motion will be denied because it makes no effort to brief the legal authority for the requested relief. For instance, there is not even a mention of Fed. R. Civ. P. 60(b). The court should not have to speculate about the aspect of Rule 60(b) being invoked here.

Finally, the motion will be denied as moot because the court is granting the debtors' motion for conversion to chapter 13, which is being heard on November 18, 2013. Once the case is converted, the chapter 7 trustee will no longer have authority over property of the estate, including the rental property. The debtors would be entrusted with authority over property of the estate. See 11 U.S.C. §§ 1303 and 1306.

7. 13-32521-A-7 KEITH MILLER AND MARY JINGCO
NFS-1 GREENTREE SERVICING, L.L.C. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
10-29-13 [9]

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

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $230,000 and it is encumbered by claims totaling approximately $322,315. The movant's deed is in first priority position and secures a claim of approximately $174,709.

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 November 6, 2013.

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

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

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of

the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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

8. 13-22425-A-7 JASON/BREANNA DESCHAINE — MOTION TO COMPEL ABANDONMENT
ULC-2 — 10-31-13 [38]

Tentative Ruling: The motion will be denied without prejudice.

The debtors request an order compelling the trustee to abandon the estate's interest in the debtors' claims for intentional misrepresentation, negligence, breach of contract, promissory estoppel, violation of Cal. Civ. Code §§ 2923.6, 2923.7, and 2924, and "Equitable Action to Set Aside Sale," against Indymac Mortgage Services, Federal Home Loan Mortgage Corporation, MTC Financial, Inc "and Does 1 through 50, inclusive." The claims are pending in the U.S. District Court for the Eastern District of California.

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

The debtors contend that the claims are burdensome to the estate because the trustee "will have to hire an attorney to prosecute the lawsuit, which will be difficult as these lawsuits are quite complex[,] . . . will have to conduct discovery, draft legal memoranda, attend depositions, and attend court hearings." Docket 38 at 2.

The court disagrees that the foregoing difficulties necessarily make the claims burdensome to the estate. The trouble with the motion is that the debtors make no effort to value the claims. They do not identify the damages they are seeking to recover in the lawsuit and they do not disclose the unencumbered equity in the property they are seeking to recover.

More, if the above-enumerated difficulties would make the claims burdensome to the estate, then all lawsuits would be burdensome to the estate. All lawsuits involve the retention of an attorney by the estate, the conducting of

discovery, the attending of court hearings. The court is not satisfied that the motion establishes that the lawsuit is burdensome or of inconsequential value to the estate. The motion will be denied.

9.	11-24633-A-7 BHS-5	ANDREW/KIMBERLEY BROCCHINI	MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $16,340.67, EXP. $4,814.41) 10-17-13 [62]

Tentative Ruling: The hearing on the motion will be continued to December 3, 2013 at 10:00 a.m.

Timmons, Owen & Owen, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $16,340.67 in fees (reduced from $18,395.20) and $4,814.41 in expenses, for a total of $21,155.08. This motion covers the period from June 1, 2011 through October 9, 2013. The court approved the movant's employment as the trustee's special counsel on May 10, 2013. The requested compensation is based on a contingency fee agreement, providing for a net recovery after costs of 33.3% if the case is settled prior to trial and a net recovery after costs of 40% if the case is "set for" trial.

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) representing the estate in the prosecution of personal injury claims, (2) meeting with the debtors, (3) conducting extensive discovery, including the taking of depositions, (4) communicating with expert witnesses, (5) briefing and attending a mediation, (6) negotiating a settlement, and (7) communicating with the trustee about various issues.

The motion does not address why the court should authorize the payment of compensation for services rendered approximately as far back as two years prior to the entry of the order employing the movant. The order employing the movant was entered on May 10, 2013, whereas the movant started providing the services for which it is seeking compensation on June 1, 2011. And, the employment order does not provide for the retroactive approval of the movant's employment. Docket 53.

The court understands that the trustee did not know about the personal injury claims until the case was reopened in February 2013, when she apparently discovered that the debtors had been litigating the claims since June 2011.

However, the instant motion does not cite or address the requirements for retroactive approval of employment for estate professionals.

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the

decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

The court will continue the hearing on this motion to December 3, 2013 at 10:00 a.m., in order to allow the movant to supplement the motion in accordance with this ruling.

Finally, at the November 18 hearing, the court will ask the trustee to clarify why in this motion the requested legal fees for the movant total $16,340.67, while in the related compromise motion (DCN BHS-4) those fees are $15,090.67, reduced from $16,728.53. Docket 58 at 3.

10. 13-33635-A-7 GWYNNE PRATT — MOTION FOR
CJO-1 — RELIEF FROM AUTOMATIC STAY
GREENTREE SERVICING, L.L.C. VS. — 11-1-13 [9]

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

The motion will be granted.

The movant, Green Tree Servicing, seeks relief from the automatic stay as to real property in Carmichael, California. The property has a value of $180,000 and it is encumbered by claims totaling approximately $315,451. The movant's deed is in first priority position and secures a claim of approximately $288,961.

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

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

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

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

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

11. 11-43543-A-7 KENNETH/LORI CRUZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $2,530.50, EXP. $11.40)
DNL-5 — 10-28-13 [106]

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

The motion will be granted.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,530.50 in fees and $11.40 in expenses, for a total of $2,541.90. This motion covers the period from November 11, 2011 through October 23, 2013. The court approved the movant's employment as the estate's accountant on November 15, 2011. In performing its services, the movant charged hourly rates of $180, $190 and $275.

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 reviewing documents provided by the trustee, updating 505(b) letters, preparing tax returns, and communicating with the trustee about tax-related issues.

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

12. 11-43543-A-7 KENNETH/LORI CRUZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $13,192.50, EXP. $617.30)
DNL-6 — 10-28-13 [101]

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

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $13,192.50 in fees and $617.30 in expenses, for a total of $13,809.80. This motion covers the period from November 7, 2011 through October 11, 2013. The court approved the movant's employment as the trustee's attorney on November 15, 2011. In performing its services, the movant charged hourly rates of $75, $175, $195, $225, $275, $350, $375 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing the administration of a wrongful termination litigation against CBS Radio, (2) negotiating with the debtors to resolve the estate's interest and their exemption in the litigation, (3) obtaining court approval of the trustee's stipulation with the debtors about their exemption in the litigation, (4) communicating with the estate's special counsel about the litigation, (5) negotiating and preparing a stipulation with the debtors over their 2011 tax refund, (6) obtaining court approval of a compromise with CBS, and (7) preparing and filing employment and compensation motions.

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

13. 13-23747-A-7 KAY BANDURA — MOTION TO SELL
JRR-1 — 10-24-13 [18]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $427,900 the estate's interest in real property in El Dorado Hills, California to Russell and Katherine Gundry. The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval to pay the real estate commissions.

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

This is a short sale from which the estate will benefit by receiving $21,395 as a buyer's premium fee. The property is subject to two mortgages, both in favor of Wells Fargo Home Mortgage, which has agreed to the sale as to both of its claims. In full satisfaction of its first mortgage claim, Wells Fargo Home Mortgage will receive $376,151.51 and it will receive $0.00 on account of its second mortgage claim.

Wells Fargo Home Mortgage will execute a release of its claims. The trustee is not asking that the sale be approved free and clear of liens. Docket 18 ¶ 8.

The sale will generate some proceeds for distribution to creditors of the

estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h). The court will also approve the requested real estate commissions.

14. 13-26551-A-7 MICHAEL HOLT — OBJECTION TO EXEMPTION
SLF-13 — 10-15-13 [142]

Tentative Ruling: The hearing on the objection will be continued to December 30, 2013.

The trustee objects to the debtor's $175,000 exemption under Cal. Civ. Proc. Code § 704.730 in his real property in Ripon, California, arguing that the debtor is not entitled to an exemption under Cal. Civ. Proc. Code § 704.730 as he did not reside on the property on the petition date.

The debtor opposes the objection. The trustee has filed a reply.

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 the October 15, 2013 deadline stipulated to by the debtor and the trustee on August 12, 2013. Docket 99. This objection was filed on October 15, 2013.

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)).

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

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

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

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

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

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

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

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

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

Because rights to exemptions of property are determined as of the date the petition is filed, the question here is whether the debtor resided at the property on the petition date, May 10, 2013. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); Gaughan v. Smith (In re Smith), 342 B.R. 801, 806 (B.A.P. 9th Cir. 2006).

Courts have recognized some exceptions to the physical occupancy rule. "Pursuant to California law, the factors a court should consider in determining

residency for homestead purposes are (1) physical occupancy of the property and (2) the intention with which the property is occupied. In re Bruton, 167 B.R. 923, 926 (Bankr. S.D. Cal. 1994), citing Ellsworth v. Marshall, 196 Cal. App. 2d 471, 474, 16 Cal. Rptr. 588, 590 (1961). A debtor temporarily absent from the property on the date of the petition can claim a homestead exemption. Id.; In re Anderson, 824 F.2d at 756; In re Yau, 115 B.R. at 249; In re Dodge, 138 B.R. at 602. CCP § 704.710(c) was amended in 1983 to delete the requirement of actual residency on the date the automatic homestead exemption claim is made. In re Dodge, 138 B.R. at 607." In re Pham, 177 B.R. 914, 918-19 (Bankr. C.D. Cal. 1994).

In the interest of justice and given that the debtor is terminally ill, the court will continue the hearing on this objection to December 30, 2013 at 10:00 a.m., to allow the debtor to submit admissible and probative evidence about his medical condition, his required care, the circumstances surrounding his leaving the subject property in April 2013, his intent to return to the property as of the petition date, and anything else that the debtor may deem helpful and important for the court to resolve this objection.

Such additional evidence from the debtor shall include a declaration by a doctor familiar with his condition, treatment and required care, a declaration from the debtor's caregiver, and a declaration from the debtor, assuming he is able to execute a declaration. If the debtor is unable to execute a declaration about the foregoing issues, the court needs admissible and sufficient evidence on this point.

The debtor shall file his additional evidence no later than December 16, 2013 and the trustee shall file his response to such evidence no later than December 23, 2013.

15. 11-24752-A-7 DANIEL ROGERS
DNL-7

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $22,015.50, EXP. $829.16)
10-25-13 [89]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $22,015.50 in fees and $829.16 in expenses, for a total of $22,844.66. This motion covers the period from May 20, 2011 through October 23, 2013. The court approved the movant's employment as the trustee's attorney on June 3, 2011. In performing its services, the movant charged hourly rates of $175, $195, $210, $225, $275, $350, $375 and $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents and advising the trustee about the administration of the estate, (2) researching exemption issues, (3) preparing and prosecuting objection to an exemption claim, (4) researching potential claims against USB, (5) preparing a complaint against USB, (6) negotiating a settlement with USB, (7) obtaining court approval of the settlement, (8) attending court hearings, (9) preparing motion to abandon real property, (10) communicating with the debtor in an effort to recover property of the estate, (11) preparing and prosecuting a complaint to revoke the debtor's discharge, (12) preparing and prosecuting a motion for turnover of estate property, (13) preparing and prosecuting a motion for default judgment in the revocation proceeding, (14) preparing a motion to dismiss in the same proceeding, after the debtor agrees to cooperate with the trustee, and (15) 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.

16. 12-33565-A-7 MARK KOLODZIEJ — OBJECTION TO CLAIM
BHS-5
VS. MARIO DIAZ MDA CONSTRUCTION, INC. — 10-4-13 [37]

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

The trustee objects to claim no. 2-2 of Mario Diaz MDA Construction, Inc. The claim is for $500,000. Aside from $11,725 claimed as a priority claim under 11 U.S.C. § 507(a)(4), the claim is a general unsecured claim, based on fraud and breach of a partnership agreement causes of action. A state court complaint filed on April 6, 2012 is attached to the proof of claim. This case was filed on July 24, 2012.

Priority status can be claimed only for claims outlined in 11 U.S.C. § 507(a). Here, none of the documentation attached to the proof of claim indicates that the proof of claim is entitled to priority status under the asserted § 507(a)(4), which provides for priority status of claims for wages, salaries, commissions, vacation, severance, sick leave or sales commissions. The proof of claim is for damages resulting from a breach of contract or fraud. No wages, salaries, commissions, vacation, severance, sick leave or sales commissions are implicated. Hence, the claim will be disallowed to the extent it seeks priority status to the extent of $11,725.

The remainder of the objection will be overruled, however. The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

"Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, *the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim*. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said

that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The trustee has not offered sufficient evidence to rebut the presumptive validity of the claim. The factual basis for the complaint attached to the proof of claim is that on or about January 1, 2011 the claimant entered into an oral agreement with the debtor, who was doing business as Eagle Construction Company. The agreement provided that the claimant and the debtor would be partners in a construction business, doing business under the name of Eagle Construction Company, from which the claimant would be entitled to 50% of the profits. The complaint says that the claimant completed his obligations under the partnership agreement, by managing and working at construction jobs with a value of over $1 million, but he did not receive any profits or reimbursement of expenses he advanced, on account of the agreement with the debtor.

The trustee's only response is that Eagle Construction Company was not formed until March 14, 2012, and the debtor filed this bankruptcy case on July 24, 2012, the implication being that the claimant's allegations must be false because Eagle Construction Company did not exist until only four months prior to bankruptcy. Docket 39.

The court disagrees with the trustee. The fact that Eagle Construction Company was not formed until March 14, 2012 does not necessarily mean that the debtor and the claimant did not do business as general partners, recognized by California law, under the name Eagle Construction Company, prior to March 14, 2012. There is no requirement under California law for a partnership to be formally "formed" or registered to be recognized under California law. Cal. Corp. Code § 16202. Thus, the court is not satisfied that the trustee has offered sufficient evidence to rebut the presumptive validity of the claim. The objection will be overruled in part and sustained in part.

17. 05-34866-A-7 PETER KIDD — MOTION TO
MOH-1 — AVOID JUDICIAL LIEN
VS. TARGET NATIONAL BANK — 10-15-13 [18]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Target National Bank for the sum of $5,333.71 on October 1, 2004. The abstract of judgment was recorded with Butte County on November 23, 2004. That lien attached to the debtor's residential real property in Magalia, California. The debtor is asking the court to avoid the lien against the property.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $70,000 as of the date of the petition. The unavoidable liens total $63,000 on that same date, consisting of a single mortgage in favor of R. Holley. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $7,000 in Schedule C.

The court cannot grant the motion for at least two reasons. First, the motion is not supported by any admissible 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)." Importantly, none of the exhibits to the motion are authenticated by a supporting declaration.

Further, the court cannot adopt the value of the property from Schedule A, as requested by the debtor, because that value is based on what a realtor told the debtor about the value of the property. See Schedule A. The scheduled value is not based on the debtor's opinion. The court cannot accept the scheduled value of the property because it is based on a purported expert opinion that is hearsay and the expert is not present. See Fed. R. Evid. 701, 702, 802. The motion will be denied.

18. 12-33467-A-7 RONALD DUNCAN — MOTION TO SELL
DNL-5 — 10-28-13 [179]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell - free and clear of a lien held by the FTB - for $70,500 the estate's interest in real property in Sacramento, California to Lawrence Marion. The property consists of approximately 37,000 square feet of vacant land. The trustee is asking for waiver of the time period of Fed. R. Bankr. P. 6004(h).

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

The property is subject to $38,000 in outstanding property taxes and a tax lien in favor of the FTB that is for $30,548.67 in the FTB's proof of claim. The FTB has consented to the sale; has agreed that the penalty and interest of its lien is void as to the trustee and is preserved for the benefit of the estate; has agreed to release the lien for purposes of the sale in exchange for payment of $20,000; and has agreed to subordinate the balance of its lien "to all superior liens and encumbrances, property taxes, costs of sale, and closing costs associated with Trustee's sale of the Subject Property."

The property was subject to a deed of trust securing a loan for $249,863 in favor of First Northern Bank of Dixon, which sold the loan to an affiliate of the debtor, Carmichael Construction Company, which in turn executed a reconveyance of the deed reflecting a satisfaction of the loan. The property was also subject to an abstract of judgment for $40,716 in favor of Floor Covering Installers, which was recorded post-petition. Floor Covering has executed a release of the judgment lien.

The buyer has agreed to pay all real estate commissions associated with the sale.

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2) as to FTB's lien, given FTB's consent to the sale. The sale will not be approved free and clear of any other liens. The sale is in the best interests of the creditors and the estate. The court will waive the 14-day period of Fed. R. Bankr. P. 6004(h).

19. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO AVOID JUDICIAL LIEN
BLG-1
VS. HELENA TORRE — 10-3-13 [31]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Helena Torre for the sum of $92,082 on May 22, 2013. The abstract of judgment was recorded with Siskiyou County on June 5, 2013. That lien attached to the debtor's residential real property in Yreka, California (Jackson Street). The debtor is seeking to avoid the lien as to that property.

The motion will be denied because it does not disclose the encumbrances against the property. The motion merely says that "[t]he value of Debtors' real property at the time of the petition's filing was $185,000.00; the Debtors' equity, after deducting the mortgages against the property was $0.00." The court should not have to speculate about what are the encumbrances against the property.

More, even after examining Schedule D (Docket 1), the court is not certain of the nature of all encumbrances against the property. For instance, there is nothing in the motion papers or the schedules to apprise the court of the nature of the $196,000 claim held by Harry Smolen. Schedule D says only that the claim is "Secured against all property." The motion will be denied.

20. 13-31574-A-7 ROGER/KIMBERLEE ABBOTT — MOTION TO AVOID JUDICIAL LIEN
BLG-2
VS. HELENA TORRE — 10-3-13 [35]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Helena Torre for the sum of $92,082 on May 22, 2013. The abstract of judgment was recorded with Siskiyou County on June 5, 2013. That lien attached to the debtor's residential real property in Yreka, California (613 French Street). The debtor is seeking to avoid the lien as to that property.

The motion will be denied because it does not disclose the encumbrances against the property. The motion merely says that "[t]he value of Debtors' real property at the time of the petition's filing was $90,320.00; the Debtors' equity, after deducting the mortgages against the property was $10,320.00." The court should not have to speculate about what are the encumbrances against the property.

More, after examining Schedule D (Docket 1), the court is not certain whether the property is even encumbered and is not certain of the nature of the only claim that may be secured by the property. The property is not listed in Schedule D. Schedule D says only that the $196,000 claim of Harry Smolen is "Secured against all property." However, it is not clear if this includes the subject property and it is not clear what is the nature of the claim held by Harry Smolen. The motion will be denied.

21. 13-30783-A-7 BAYANI/CHARITO ANTONIO — MOTION FOR RELIEF FROM AUTOMATIC STAY
KNC-1 — 10-31-13 [15]
AMERICAN HOMES 4 RENT PROPERTIES FIVE, L.L.C. VS.

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

The motion will be granted.

The movant, American Homes 4 Rent Properties Five, L.L.C., seeks relief from the automatic stay as to real property in Vallejo, California. The movant purchased the property at a pre-petition foreclosure sale, on April 16, 2013. The debtor filed the instant petition on August 16, 2013.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to obtain possession of the property in accordance with state law, including proceeding with an unlawful detainer action against the debtor in state court. The parties may go to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor or the estate. The movant is limited to recovering possession of the property.

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

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

22. 13-31888-A-7 FERNANDO/PURIFICACION SISON — MOTION TO AVOID JUDICIAL LIEN
SDB-1 — 10-15-13 [11]
VS. CAVALRY SPV 1, L.L.C.

Tentative Ruling: The motion will be denied.

A judgment was entered against Debtor Fernando Sison in favor of Calvary SPV I, L.L.C. for the sum of $6,133.16 on July 24, 2012. The abstract of judgment was recorded with Solano County on September 13, 2013. The debtor is asking the court to avoid the lien with respect to a residential real property in Vallejo, California.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $286,000 as of the date of the petition. The unavoidable liens total $272,179.55 on that same date, consisting of a sole mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C.

The motion will be denied as unnecessary because the subject lien is void. Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006). The abstract of judgment was recorded post-petition, in violation of the automatic stay. See 11 U.S.C. § 362(a). The abstract was recorded on September 13, 2013, whereas this case was filed on September 10, 2013. The motion will be denied.

23. 11-35193-A-7 J/MARIA CARDENAS
SLF-16

MOTION TO SELL AND APPROVE COMPROMISE
10-21-13 [135]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell the estate's interest in real property in Oakland, California, to the debtors, as part of a settlement with them that resolves the estate's interest in the property, the trustee's objection to the debtors' exemption in the property, the estate's surcharge claim against their exemption in the property, and the trustee's objection to the debtors' valuation of the property. The trustee asks that the court approve the transaction also as a compromise.

The facts giving rise to this motion are as follows. The debtors filed this case and claimed an exemption in the Oakland property under Cal. Civ. Proc. Code § 704.730(a), even though they scheduled another property as their residence. When the trustee challenged the debtors' right to claim an exemption in the property, as if it is their residence, the debtors filed multiple unsuccessful motions to convert the case to chapter 13. The trustee filed a motion to compel turnover of the property, which motion was granted.

In their last Amended Schedule A, the debtors scheduled the value of the property as $112,000, with debt of $67,800. In Schedule C, the debtors have claimed an exemption of $19,290. The trustee disputes the scheduled value of the property, claiming that its value is probably somewhere between $129,000 and $152,000. The trustee also contends that the estate has a surcharge claim against the debtors' exemption in the property, given their efforts to frustrate his attempts to administer the equity in the property.

Under the terms of sale and compromise, the debtors will pay $26,000 to the estate, $16,000 of which is for the estate's interest in the property and $10,000 of which is for settling the estate's surcharge claim, *i.e.*, to reduce the estate's administrative expenses in having to litigate with the debtors. The payment of $26,000 is in full satisfaction of all of the estate's claims against the debtors that pertain to the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The sale will be approved subject to any liens or interests encumbering the property.

The court will approve the transaction 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 that the trustee will not have to list the property for sale and incur additional expenses to sell the property and obtain court approval for such sale, given that the trustee will not have to incur additional expenses to litigate a surcharge motion, 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.

24. 10-46597-A-7 ROBERT/REBECCA WHITE — MOTION TO AVOID JUDICIAL LIEN
NSN-1
VS. VION HOLDING, L.L.C. — 11-4-13 [40]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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.

A judgment was entered against Debtor Robert White in favor of Vion Holdings, L.L.C. for the sum of $15,940.59 on April 15, 2010. The abstract of judgment was recorded with Sacramento County on September 16, 2010. That lien attached to the debtor's residential real property in Elk Grove, California (Virginia Fife Way).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $325,000 as of the date of the petition. The unavoidable liens total $346,788 on that same date, consisting of a single mortgage in favor of Flagstar Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 27.

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

25. 13-32759-A-7 ARTURO GOMEZ AND VALERIE VIZGAUDIS
VVF-2 AMERICAN HONDA FINANCE CORP. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
11-1-13 [17]

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

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2008 Honda TRX motorcycle. The movant recovered possession of the vehicle pre-petition. The movant has produced evidence that the vehicle has a value of $2,510 and its secured claim is approximately $3,816. Docket 19.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on November 9, 2013.

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

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

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

THE FINAL RULINGS BEGIN HERE

26. 13-31912-A-7 THOMAS FOWLER — MOTION TO AVOID JUDICIAL LIEN
EJS-1
VS. CACH, L.L.C. — 10-21-13 [10]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Cach, L.L.C. for the sum of $18,057.48 on October 5, 2012. The abstract of judgment was recorded with Sacramento County on August 8, 2013. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $110,000 as of the date of the petition. The unavoidable liens total $266,246 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C.

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

27. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
GRO-1
SAFECO INSURANCE COMPANY VS. — 10-11-13 [542]

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

The motion will be granted.

The movant, Golden Eagle Insurance Company and Safeco Insurance Company, seeks relief from the automatic stay to proceed with its property damage subrogation claims against the debtor and its insurer. Recovery will be limited to

available insurance coverage.

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

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

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

28. 13-30214-A-7 JILL RICCI — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 10-18-13 [13]
SETERUS, INC. VS.

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

The motion will be granted.

The movant, Seterus, Inc., seeks relief from the automatic stay as to real property in Adelanto, California. The property has a value of $65,000 and it is encumbered by claims totaling approximately $151,379. The movant's deed is in first priority position and secures a claim of approximately $104,379.

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 September 11, 2013.

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

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

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

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

29.	11-31715-A-7 DNL-6	J.R. YEAGER TILE CO., INC.	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $1,288, EXP. $6.20) 10-21-13 [183]

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

The motion will be granted.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,288 in fees and $6.20 in expenses, for a total of $1,294.20. This motion covers the period from March 30, 2013 through October 15, 2013. The court approved the movant's employment as the estate's accountant on June 3, 2013, effective March 30, 2013. The movant has agreed to waive all fees and expenses incurred prior to March 30, 2013, amounting to 8.2 hours of work. In performing its services, the movant charged hourly rates of $190 and $300.

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

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

30.	11-31715-A-7 DNL-7	J.R. YEAGER TILE CO., INC.	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $10,209, EXP. $273.43) 10-21-13 [188]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further,

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $10,209 in fees and $273.43 in expenses, for a total of $10,482.43. This motion covers the period from April 25, 2012 through October 16, 2013. The court approved the movant's employment as the trustee's attorney on May 11, 2012. In performing its services, the movant charged hourly rates of $175, $195, and $350.

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 sale of vehicles at an auction, (2) obtaining court approval of the sale, (3) analyzing the administration of a 401k plan, (4) advising the trustee about termination of the plan, (5) preparing and prosecuting a motion for the termination of the plan, (6) reviewing the claims asserted against the estate, including a class action claim, (7) advising the trustee about the general administration of the estate, and (8) preparing and filing employment and compensation motions for several professionals of the estate.

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.

31. 13-31226-A-7 CHRISTOPHER/LINDA HOHNS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JFL-1 — 10-18-13 [16]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

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

The motion will be granted.

The movant, Federal National Mortgage Association, seeks relief from the automatic stay as to real property in Grass Valley, California. The property has a value of $150,000 and it is encumbered by claims totaling approximately $223,590. The movant's deed is in first priority position and secures a claim of approximately $189,780.

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 8, 2013.

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

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

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

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

32. 13-32627-A-7 ANH TRAN — MOTION TO EXTEND DEADLINE 10-25-13 [19]
WAC-1

Final Ruling: This motion has been denied by the court already. See Docket 25. In addition, the case was dismissed on October 28, 2013, making this motion moot.

33. 12-41228-A-7 KEITH THOMPSON — MOTION TO APPROVE COMPROMISE 10-17-13 [86]
TAA-2

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the Board of Trustees of the California State University, resolving the debtor's employment discrimination claims against the Board. Under the terms of the compromise, the Board will pay $17,000 to the estate in full satisfaction of the claims.

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 complex employment and religious discrimination legal issues involved, given that the estate will not have to retain special counsel to prosecute the claims, given that the settlement will generate sufficient proceeds for an estimated dividend of at least 50% on account of timely unsecured claims, 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.

34.	11-24633-A-7 BHS-4	ANDREW/KIMBERLEY BROCCHINI	MOTION TO APPROVE COMPROMISE 10-17-13 [58]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and Linsay Gallagher and Nancy Gallagher on the other, resolving the debtors' personal injury claims arising from an automobile accident.

Under the terms of the compromise, the Gallaghers will pay $60,000 on account of the claims, $5,000 of which is on account of Mr. Brocchini's loss of consortium claim and $55,000 is on account of the claims asserted by Mrs. Brocchini. After payment of the legal fees and costs, medical liens, workers' compensation liens, and the debtors' exemption claim - reduced from $22,075 to $12,072.61, the estate will net $12,072.61 from the settlement.

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 reduction of the debtors' exemption claim, given the substantial risks of the personal injury action going to trial, and given the inherent costs, 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.

35. 13-31835-A-7 CHARLES KINGSLEY — MOTION TO AVOID JUDICIAL LIEN
NBC-1
VS. DONALD D. FELTSEN — 9-13-13 [13]

Final Ruling: The motion will be dismissed without prejudice because the notices of hearing violate Local Bankruptcy Rule 9014-1(d)(3), which requires the notice of hearing to indicate whether and when written opposition must be filed to the motion at issue.

This notice of hearing does not indicate whether and when written opposition to the motion must be filed. Both the original and first amended notices refer only to the "opposition of the confirming of this plan." But, this motion does not pertain to plan confirmation. It is a motion for the avoidance of a lien. Referring to "opposition of the confirming of this plan" then is confusing and violates Local Bankruptcy Rule 9014-1(d)(3). Accordingly, the motion will be dismissed.

Even if the motion were not dismissed, it would have been denied, as it is devoid of admissible 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 court also notes that there is no evidence of the purported judicial lien as there is no recorded abstract of judgment in the record, the lien is not listed in Schedule D, and the court has no evidence that the debtor is entitled to the claimed exemption in the property under Cal. Civ. Proc. Code § 704.730.

36. 12-39236-A-7 TINA BROWN — MOTION TO AVOID JUDICIAL LIEN
WWY-2
VS. KBR, INC. — 10-16-13 [23]

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."

Service on the respondent creditor, KBR, Inc., dba Rach Curtis & Associates, was not addressed 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. Docket 27.

Further, even if service were proper, the notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. Docket 24. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

37. 12-39236-A-7 TINA BROWN — MOTION TO AVOID JUDICIAL LIEN
WWY-3
VS. CITIBANK (SOUTH DAKOTA), N.A. — 10-16-13 [28]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the motion indicates that service was not by certified mail - it was by first class mail, and the notice was not addressed to an officer of the creditor. Docket 32.

Further, even if service were proper, the notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. Docket 29. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

38. 12-39236-A-7 TINA BROWN — MOTION TO AVOID JUDICIAL LIEN
WWY-4
VS. LVNV FUNDING, L.L.C. — 10-16-13 [33]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires

service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Service on the respondent creditor, LVNV Funding, L.L.C., was not addressed 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. Docket 37.

Further, even if service were proper, the notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. Docket 34. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

39. 11-39843-A-7 LILIA KRYVOSHEY — MOTION TO
12-2221 — COMPEL ABANDONMENT
KRYVOSHEY V. DEUTSCHE BANK NATIONAL TRUST COMPANY — 10-10-13 [72]

Final Ruling: As the court does not hear motions in adversary proceedings on this calendar, this motion IS continued to November 25, 2013 at 10:00 a.m.

40. 11-39843-A-7 LILIA KRYVOSHEY — MOTION TO
12-2221 — EXTEND TIME
KRYVOSHEY V. DEUTSCHE BANK NATIONAL TRUST COMPANY — 10-10-13 [71]

Final Ruling: As the court does not hear motions in adversary proceedings on this calendar, this motion IS continued to November 25, 2013 at 10:00 a.m.

41. 13-23459-A-7 EVANGELINA AGUILAR — MOTION TO
HLG-2 — AVOID JUDICIAL LIEN
VS. MIDLAND FUNDING, L.L.C. — 10-10-13 [95]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Midland Funding, L.L.C. for the sum of $3,226.01 on March 27, 2012. The abstract of judgment was recorded with Sutter County on September 11, 2012. That lien attached to the debtor's residential real property located in Yuba City, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $189,000 as of the date of the petition. The unavoidable liens total $403,990 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C.

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

42. 13-23459-A-7 EVANGELINA AGUILAR — MOTION TO AVOID JUDICIAL LIEN
HLG-3
VS. CAVALRY SPV I, L.L.C. — 10-10-13 [99]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Cavalry SPV I, L.L.C. for the sum of $6,577.49 on June 12, 2012. The abstract of judgment was recorded with Sutter County on October 8, 2012. That lien attached to the debtor's residential real property located in Yuba City, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $189,000 as of the date of the petition. The unavoidable liens total $403,990 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C.

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

43. 10-31261-A-7 MICHELE REED
PSB-4
VS. BENEFICIAL CALIFORNIA, INC.

MOTION TO
AVOID JUDICIAL LIEN
10-18-13 [39]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Beneficial California, Inc. for the sum of $8,847.20 on August 7, 2008. The abstract of judgment was recorded with Solano County on October 28, 2008. That lien attached to the debtor's residential real property in Fairfield, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $137,500 as of the date of the petition. The unavoidable liens total $359,694.41 on that same date, consisting of single mortgage in favor of BAC Home Loans Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C.

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

44. 12-33467-A-7 RONALD DUNCAN
PD-1
CITIMORTGAGE, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-17-13 [170]

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

The motion will be granted.

The movant, Citimortgage, Inc., seeks relief from the automatic stay as to real property in Orangevale, California (7421 Hickory Ave). The property has a value of $120,000 and it is encumbered by claims totaling approximately $240,000. The movant's deed is the only encumbrance against the property.

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

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

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

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

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

45. 11-34469-A-7 OPAQUE INVESTORS II, L.L.C. MOTION TO APPROVE COMPROMISE
HSM-2 10-15-13 [123]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Elias Bardis, a creditor of the estate, resolving the estate's avoidance claims against Mr. Bardis and his claim against the estate. Within 90 days of the petition filing, Mr. Bardis recorded abstracts of judgment, including one abstract in Kern County, California. The trustee has taken the position that the abstracts are avoidable as transfers. He has filed an avoidance action against Mr. Bardis for recovery of transfers. Mr. Bardis has filed an unsecured proof of claim for $565,122.21.

Under the terms of the compromise, Mr. Bardis has agreed that in the event the estate sells, conveys or transfers for monetary consideration property subject to encumbrances, Mr. Bardis will release his encumbrance against such property and receive nothing from the sale on account of the encumbrance. This shall not apply to any sale, conveyance or transfer for monetary consideration of real property located in Sacramento County.

For purposes of distributions, excluding the sale/transfer of property in Sacramento County, any claim of Mr. Bardis, including his proof of claim, shall be unsecured as to property sold/transferred, but such claim shall remain secured as to any property no sold/transferred during the pendency of this case. The compromise also requires Mr. Bardis to cooperate with the trustee in any sale/transfer and the removal of liens. Property not sold at the time this case closes or such property is abandoned shall remain encumbered. The trustee will dismiss the pending avoidance action against Mr. Bardis.

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 that the trustee will have the benefit of removing Mr. Bardis' encumbrances on property the estate wants to sell, without the necessity of litigating the avoidance and recovery of such encumbrances, 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.

46. 13-33675-A-7 JAMES KEIL — ORDER TO SHOW CAUSE 10-31-13 [14]

Final Ruling: This order to show cause will be discharged as moot because the case was dismissed on November 4, 2013.

47. 13-28194-A-7 JOHN KING — MOTION TO AVOID JUDICIAL LIEN 10-10-13 [27]
BMW-3
VS. GRANT AND WEBER

Final Ruling: The motion will be dismissed without prejudice. Even though this motion was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(1), the notice of hearing states: "If you do not want the Court to avoid the judicial lien held by Grant & Weber, or if you want the Court to consider your views on this matter, then you should appear at the hearing on the Motion." This is not what Local Bankruptcy Rule 9014-1(f)(1). The rule requires that parties wanting to respond to the motion *must* file a written opposition to the motion at least 14 days prior to the hearing. In reference to the 14-day requirement, the notice of hearing states only that "if you file a response to the Motion with the Court, you must file it not later than fourteen (14) days."

Also, although the notice of hearing says: "If you or your attorney do not take these steps, the Court may decide that you do not oppose the Motion and may

grant the Motion, in some circumstances, without even conducting an actual hearing," the notice is not clear about which of the above-outlined steps are required and is not clear that the filing of written opposition 14 days prior to the hearing is required.

In short, the notice of hearing may be interpreted not to require the filing of opposition 14 days prior to the hearing. This does not satisfy the requirements of Local Bankruptcy Rule 9014-1(f)(1). Accordingly, the motion will be dismissed.