UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 16, 2013 at 10:00 a.m.

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

7, 9, 10, 12, 19, 20, 24

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 JANUARY 13, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 30, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 6, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO SELL
DNL-10 11-25-13 [237]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $40,798 the estate's interest in a manufactured mobile home to Castle Village, L.L.C. The property is encumbered by a claim for $483,276.75 in favor of Textron Financial Corporation, whose claim is secured by other property as well. The mobile home has a scheduled value of $65,000.

Textron has consented to the sale. $35,000 of the sale proceeds will be paid to Textron, while the estate will receive the remainder $5,798.

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 sale will generate some proceeds for distribution to creditors of the estate. The sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), free and clear of Textron's lien on the property, given Textron's consent to the sale. The sale is in the best interests of the creditors and the estate.

2. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO SELL
DNL-11 11-25-13 [242]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $53,259 the estate's interest in a manufactured mobile home to John Ferreira. The property is encumbered by a claim for $483,276.75 in favor of Textron Financial Corporation, whose claim is secured by other property as well. The mobile home has a scheduled value of $55,900.

Textron has consented to the sale. $47,500 of the sale proceeds will be paid to Textron, while the estate will receive the remainder $5,759.

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 sale will generate some proceeds for distribution to creditors of the

estate. The sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), free and clear of Textron's lien on the property, given Textron's consent to the sale. The sale is in the best interests of the creditors and the estate.

3. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO SELL
DNL-9 11-25-13 [232]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $51,548 the estate's interest in two manufactured mobile homes to Calaveras Valley Village, L.L.C. The property is encumbered by a claim for $483,276.75 in favor of Textron Financial Corporation, whose claim is secured by other property as well. The mobile homes have an aggregate scheduled value of $88,000.

Textron has consented to the sale. $42,600 of the sale proceeds will be paid to Textron, while the estate will receive the remainder $8,948.

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 sale will generate some proceeds for distribution to creditors of the estate. The sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), free and clear of Textron's lien on the property, given Textron's consent to the sale. The sale is in the best interests of the creditors and the estate.

4. 13-22913-A-7 CLINTON WILLIAMS MOTION TO AVOID JUDICIAL LIEN
CBW-2 11-12-13 [34]
VS. KELKRIS ASSOCIATES

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

The debtor served the motion on Kelkris Associates by addressing it to "Terry Duree, Esq Officer, managing or general agent, or person Authorized to received [*sic*] service of process."

However, Mr. Duree is not officer, managing or general agent, or person authorized to receive service of process for Kelkris. Mr. Duree was counsel for Kelkris in the state court action and he has a different address than the address for Kelkris, where apparently this motion was served. Docket 36. By addressing service of the motion to Kelkris' counsel followed by the language

"Officer, managing or general agent, or person Authorized to received [*sic*] service of process," the party to whom service is addressed is ambiguous.

More, unless Mr. Duree agreed to accept service for Kelkris, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

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

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 18, 2013, to allow the trustee to file a written opposition to the motion, as the motion was brought pursuant to Local Bankruptcy Rule 9014-1(f)(2).

The trustee changed his mind and filed a non-opposition to the motion on December 2. However, Financial Center Credit Union has filed objection to the motion.

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.

The objection of FCCU will be overruled as untimely. The second amended notice of hearing for this motion advised all parties in interest to appear at the initial hearing on the motion, on November 18, if anyone had opposition to the motion. Docket 119. FCCU was served with that notice of hearing. Docket 120. The minutes from the November 18 hearing indicate that FCCU did not appear at that hearing. Only the trustee appeared and raised an opposition to the motion. Docket 131. Thus, the court continued the hearing on the motion to December 16, for the purpose of only the trustee to file opposition to the motion. The court did not continue the hearing for anyone other than the trustee, as only the trustee appeared at the hearing and raised opposition. Therefore, FCCU's objection will be overruled as untimely.

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. 13-34718-A-7 MICHAEL RODRIGUEZ — MOTION TO COMPEL ABANDONMENT 11-22-13 [9]
LCL-1

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

The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his sole proprietorship IT consultancy business.

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

According to the motion, the business assets include "laptop + printers + supplies, etc." with a scheduled value of $1,000. The business assets have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

8. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO CONVERT CASE TO CHAPTER 13
WSS-3 — 11-13-13 [77]

Tentative Ruling: The motion will be denied.

The debtors request conversion of the case to chapter 13.

The trustee and creditors Arian Baraki and Mohammad Nyibkil oppose the motion, contending that the debtors are seeking the conversion in bad faith.

Given the Supreme Court's recent 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.

This request for conversion is made in bad faith.

Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

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

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Delay in the claiming of an exemption is not sufficient by itself to constitute bad faith for purposes of denying the exemption. Arnold v. Gill (In re Arnold), 252 B.R. 778, 786 (B.A.P. 9th Cir. 2000).

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

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

The trustee has produced evidence that the debtors have failed to make serious disclosures, including failing to disclose in their schedules business interests in Carz Avenue and other businesses, failing to disclose the transfer of a real property for more than one year after filing this case, failing to disclose the post-petition payment of a pre-petition debt to Anton Saca in the amount of $31,638.10, and failing to disclose the source of payment for the debt.

According to counsel for the trustee:

"Subsequent to the deposition of Mr. Saca, the Trustee still did not have any documentation regarding the source of the funds used to pay Mr. Saca. On October 28,2013, the Debtors filed Declarations with this Court stating that the funds used to pay Mr. Saca were borrowed from Wahab Sharifie.

"On November 18,2013 at 3:40 P.M., I transmitted an email to Mr. Shumway, requesting that the Debtors provide documents evidencing that the sums paid to Mr. Saca were in fact borrowed from Wahab Sharifie.

"On November 1 8,2013 at 4:30 P.M., Mr. Shumway responded to me via email, stating: 'I will ask my clients for evidence that they obtained the money to pay Mr. Saca from Mr. Sharifie.' (Emphasis added).

"On November 18,2013 at 4:34 P.M., I responded to Mr. Shumway's email. Mr. Shumway responded on November 18,2013 at 5:07 P.M., referring me to his previous email. A true and correct copy of the string of emails with Mr. Shumway is attached as Exhibit 1 to the Separate List of Exhibits filed concurrently herewith.

"As of the filing of this Opposition, the Trustee has still not been provided with the requested documents regarding whether Mr. Sharifie was the source of the payment to Mr. Saca, and has been unable to determine whether the funds constitute property of the estate."

Docket 86, Pino Decl., ¶¶ 6-10.

Further, "[p]ursuant to a previously issued subpoena, JPMorgan Chase Bank produced documents reflecting withdrawals and deposits into the account of Carz Avenue supposedly a sole proprietorship of Wahab Sharifie. I have personally reviewed the documents produced. The signature card and other documents reflect that the Debtor were signatories to the account, were signing checks, and depositing personal checks into the Carz Avenue account, including payments from a third party tenant at the 2425 Arden Way Property. True and correct copies of signature card and exemplar checks are attached as Exhibit 2 to the Separate List of Exhibits filed concurrently herewith." Docket 86, Pino Decl., ¶ 11.

This case was filed on October 9, 2012. The debtors filed their first set of schedules and statements on October 23, 2012. Docket 12. The debtors amended their schedules and statements on October 28, 2013. Docket 69. No other schedules or statements have been filed by the debtors. The debtors have not disclosed an interest in Carz Avenue in any of their iterations of Schedule B.

Additionally, the statement of financial affairs filed on October 23, 2012 does not reflect the transfer of a real property interest to Mr. Sharifie within two years before the petition filing. Docket 12, SFA item 10. It was not until after the trustee requested documents from the debtors and discovered the transfer from such documents that the debtors amended the statement, disclosing the transfer. The trustee discovered the transfer after the debtors turned over documents to the trustee on October 1, 2013. Docket 52 ¶ 23. The debtors did not amend their statement of financial affairs to reflect the transfer until October 28, 2013. Docket 69, SFA item 10.

Given the foregoing, the court is persuaded that the debtors are seeking the conversion in bad faith. The evidence of assets not disclosed and assets disclosed only after the trustee discovered such assets convinces the court that the debtors are hiding assets from the trustee and their creditors. Now that this has been discovered, the debtors are attempting to escape the trustee by converting to chapter 7. The motion will be denied.

9. 09-27528-A-7 KEITH/JANET OLSEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
NMB-1 — 11-20-13 [124]
BOGMAN, INCORPORATED 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, Bogman, Inc., seeks relief from the automatic stay as to a real property in Chico, California. The property has a value of $129,000 and it is encumbered by claims totaling approximately $204,821. The movant's deed is in first priority position and secures a claim of approximately $119,971.

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

10. 12-41228-A-7 KEITH THOMPSON
TAA-3

MOTION TO EMPLOY AND TO APPROVE COMPENSATION FOR SPECIAL COUNSEL (FEES $5,100, EXP. $2,761.17)
11-22-13 [92]

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

The motion will be granted.

The trustee is asking to employ nunc pro tunc and compensate Jason Erlich as special counsel for the estate, in representing the debtors and the estate in originally undisclosed religious discrimination litigation against the Board of Trustees of the California State University. The court approved a settlement agreement with the Board on November 25, 2013. Docket 98.

Mr. Erlich was retained by the debtors on July 16, 2012 to litigate the claims against the Board on a contingency fee agreement, providing for a sliding-scale compensation arrangement, 35% contingency compensation before the filing of the litigation to 45% after commencement of trial. The compensation agreement provided also for reimbursement of advanced litigation expenses. The action, containing seven causes of action, was filed on July 31, 2012 in state court. This case was filed on December 10, 2012, but Mr. Erlich did not learn of the state court action until May 10, 2013. The debtors had other counsel representing them in this bankruptcy case.

Mr. Erlich estimates that he devoted approximately 57.8 hours of time on the litigation, including participating in extensive discovery. Mr. Erlich's paralegal also spent approximately 56 hours on the litigation. Mr. Erlich's normal hourly rate is $450 and he charges $95 an hour for paralegal services.

Mr. Erlich has agreed to reduce his fees by accepting 30% or $5,100 of the $17,000 in total settlement proceeds. He is also seeking $2,761.17 in advanced litigation costs, bringing the total of Mr. Erlich's requested compensation to $7,861.17. As the debtors' exemption in the settlement proceeds has been disallowed, the estate will retain the entirety of the remaining $9,138.83.

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) interviewing the debtors, (2) preparing the complaint, (3) filing the state court litigation, (4) conducting extensive discovery, (5) appearing at court hearings.

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 trustee did not know about the personal injury claims until Mr. Erlich learned of the bankruptcy case, in May 2013. Mr. Erlich had been working on the case since July 2012. The debtors filed this bankruptcy case on December 10, 2012 but did not disclose the pending state court action, precluding the immediate employment of Mr. Erlich to represent both the debtors and the estate in the state court action. The court is satisfied with the trustee's and Mr. Erlich's explanation about why the estate failed to obtain prior court approval

of Mr. Erlich's employment.

The movant provided valuable services for the estate, as it litigated the discrimination claims, eventually leading to a settlement agreement with the Board, generating $17,000 in settlement proceeds. The trustee has satisfied the nunc pro tunc approval standard under THC Financial.

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.

11. 12-39236-A-7 TINA BROWN — MOTION TO AVOID JUDICIAL LIEN
WWY-5
VS. CITIBANK (SOUTH DAKOTA) N.A. — 11-26-13 [48]

Tentative Ruling: The motion will be dismissed without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of $8,266.83 on February 24, 2011. The abstract of judgment was recorded with Plumas County on April 18, 2011. That lien attached to the debtor's residential real property in Quincy, California.

The debtor is asking the court to avoid the lien.

However, the motion will be dismissed because according to the attached Schedule D, the subject lien is no longer held by Citibank. It is held by Unifund now and Unifund has not been served with this motion. Docket 52.

The court also notes that Unifund is claiming that it is owed $13,000 on account of the judgment obtained by Citibank. See Schedule D.

12. 12-39236-A-7 TINA BROWN — MOTION TO AVOID JUDICIAL LIEN
WWY-6
VS. LVNV FUNDING L.L.C. — 11-26-13 [53]

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 the debtor in favor of LVNV Funding, L.L.C. for the sum of $13,798.89 on November 10, 2010. The abstract of judgment was recorded with Plumas County on August 12, 2011. That lien attached to the debtor's residential real property in Quincy, 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 $90,000 as of the date of the petition. The unavoidable liens total $79,000 on

that same date, consisting of a first mortgage for $49,000 in favor of Plumas Bank and a second mortgage for $30,000 in favor of Banco Popular. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $11,000 in Amended Schedule C. Docket 19.

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).

13. 13-28038-A-7 THOMAS/DEANA KNIGHT — MOTION TO COMPEL ABANDONMENT 11-4-13 [19]
CK-1

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

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Susanville, California and the following personal property assets: $400 in cash on hand (erroneously identified by the motion as "checking"; Schedule B item 1), collectibles with a scheduled value of $2,460 (erroneously identified by the motion as "books"; Schedule B item 5), guns and ammunition with a scheduled value of $1,955 (erroneously identified by the motion as "ammunition" only; Schedule B item 8), prudential life insurance policy with a scheduled value of $13,701.13, and a 2008 Hyundai Elantra with a value of $7,455.

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 real property is subject to a mortgage in the amount of $52,829 and the remainder of the equity, in the amount of $144,171, has been fully exempt in Schedule C. Accordingly, the real property is of inconsequential value to the estate. It will be ordered abandoned.

As to the personal property items, the only exemptions claimed are $12,189.78 in the life insurance policy and $2,900 in the Hyundai vehicle. This leaves $10,881.35 of nonexempt equity in the personal property items ($400 in cash, $2,460 for collectibles, $1,955 for guns and ammunition, $1,511.35 for nonexempt equity in policy and $4,555 for nonexempt equity in vehicle).

As there is only $1,511.35 in nonexempt equity in the life insurance policy, the court is persuaded that the equity is of inconsequential value to the estate, after accounting for administrative expenses. The policy will be ordered abandoned.

However, as to the remaining personal property items, the debtors have not demonstrated that they are burdensome or of inconsequential value to the estate. Those items have aggregate of $9,370 of nonexempt equity that can be administered for the benefit of the estate. The court also notes that the trustee has filed a notice of assets. The motion will be denied as to those items.

The court asks counsel for the movant to be more careful in the future in the

way she describes property listed in the schedules. The court should not have to review all property on the debtor's lengthy schedules just to determine what the motion might have meant in describing scheduled property.

14. 12-20944-A-7 SANDRA KELLEY — MOTION TO APPROVE COMPROMISE AND FOR TURNOVER OF FUNDS
TAA-1 — 11-21-13 [24]

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

The trustee requests approval of a settlement agreement between the estate and Bayer, against which the debtor has a pre-petition claim "for injuries related to medication." The debtor did not disclose the claim when this case was filed and before she obtained her discharge and the case was closed.

This case was filed on January 18, 2012 and the debtor received her discharge on May 7, 2012. The debtor requested the court to reopen the case so she can amend her schedules to disclose the claim against Bayer.

On August 7, 2013, the debtor filed Amended Schedules B and C, disclosing the claim, with a value of $52,862.27, representing a gross settlement amount of $81,803.07 minus $26,431.14 in attorneys and $2,509.66 in "case costs." The debtor has claimed an exemption in the settlement proceeds in the amount of $47,764.49.

The settlement was part of what appears to be a class action litigation against Bayer. The settlement amount is to be distributed subject to a 30% hold-back in the event there are medical liens that need to be satisfied.

In addition to seeking approval of the settlement, the trustee is asking the court: (1) to approve the attorney's fees and costs of Douglas & London, the law firm which represented the debtor in the litigation, and (2) to order the disbursement of all settlement proceeds, without the 30% holdback, as there are no medical liens to be paid.

The court cannot approve the compensation to Douglas & London as the court has never approved its employment. The trustee will have to file a motion asking the court to employ and pay the law firm, under the standard prescribed by THC Financial.

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 deny the request for turnover of the settlement proceeds as well. The motion does not say who is holding the settlement funds at this

time. It makes a difference. See Fed. R. Bankr. P. 7001(1), (7). That is, the turnover may require an adversary proceeding. The only exception for adjudication of a turnover request on a motion, is a request by the trustee for turnover of property by the debtor. Fed. R. Bankr. P. 7001(1).

As to the approval of the settlement agreement, 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 settlement is part of a class action litigation, given that the trustee does not have the funds to retain an attorney to further investigate and litigate the claim, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

15.	02-22348-A-7 DNL-26	BLACK MARKET RECORDS, INC.	MOTION TO DISMISS CASE 11-6-13 [325]

Tentative Ruling: The motion will be denied without prejudice.

The trustee is asking the court to dismiss this case.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." The debtor had operated a rap music recording company.

The trustee seeks dismissal because she contends such is required by a settlement agreement between the estate and the following parties: the debtor's most successful artists, creditors Kevin Mann and Arthur Battle III; creditor Randy Lacy; and the debtor's former principal Cedric Singleton and his affiliate company Black Market Transit, L.L.C.. While Mr. Singleton and Black Market Transit are not creditors of the estate, they had asserted ownership interest in some of the debtor's property.

The settlement provides for dismissal of this case, after the terms of the settlement are implemented. The trustee claims to have fulfilled all conditions of the settlement.

The court approved the settlement on November 1, 2002 but then it also entered an order enforcing the terms of the settlement on November 12, 2002. At that time, the trustee's predecessor, former trustee Stephen Reynolds, was aware of only four proofs of claim, as only those claims had been filed. They included

a general unsecured claim for $3,122.50 filed by FedEx, a general unsecured claim for $3,926.15 filed by Airborne Express, a general unsecured claim for $73,791.88 filed by Mr. Lacy, and a general unsecured claim for $968,907 filed by the artists, Mann and Battle.

Under the terms of the settlement, albums were divided between the estate, on one hand, and Mr. Singleton and Black Market Transit, on the other hand. The trustee was entitled to reproduce and market the albums allocated to the estate under the settlement, for the specific purpose of funding payments on account of claims identified by the settlement, including administrative expenses, royalties, and a $650,000 payment to be distributed pro rata to the artists, Mr. Lacy, Airborne, and FedEx.

After payment of the above claims and amounts, the settlement provided that the trustee was to convey two or three albums, along with remaining profits from those albums, to the artists, Mann and Battle. The remaining 26 albums, along with remaining profits, were to be conveyed to Mr. Singleton.

After the court entered an order enforcing the terms of the settlement, four additional proofs of claim have been filed against the estate, including:

- a general unsecured claim in the amount of $47,952.37 filed by Planet Media on March 10, 2003,

- a priority claim in the amount of $9,756.06 filed by the FTB on August 22, 2008,

- a priority claim in the amount of $5,146.32 filed by the IRS on September 17, 2008,

- a general unsecured claim in the amount of $1,884.95 filed by the IRS on September 17, 2008, and

- a general unsecured claim in the amount of $251,435 filed by Keith Lea on May 16, 2013.

The settlement and order enforcing the terms of the settlement did not provide for the payment of the subsequent-filed claims. The trustee says that Planet's claim will not be paid because it is for post-petition compact discs purchased by someone other than the trustee. The trustee represents that the estate did not order or receive any products from Planet. The trustee contends that Mr. Lea's claim should not be paid either because the claim is against Mr. Singleton and not the debtor. The claim is based on a March 26, 2002 post-petition judgment Mr. Lea obtained against Mr. Singleton only. That judgment has been renewed.

As to the priority claims held by the IRS and the FTB, the trustee urges the court to allow payment of those claims by subordinating Mr. Singleton's claim to the profits from the albums the trustee must convey to Mr. Singleton after payment of the claims and amounts identified by the settlement, which has been accomplished by the trustee already. According to the trustee, the basis for such subordination should lie in the fact that the priority claims arise from Mr. Singleton's failure to file tax returns for the debtor during a six-year period.

The trustee says nothing about the payment of the general unsecured claim filed by the IRS.

The motion will be denied without prejudice. Although the court understands the reasons for the trustee's decision not to pay claims filed after the orders approving and enforcing the settlement agreement were entered, 11 U.S.C. § 502(a) provides that proofs of claim are deemed allowed unless a party in interest successfully objects. The trustee will have to file objections to the proofs of claim she will not be paying.

Also complicating the relief sought is 11 U.S.C. § 726(a) which permits payment of late filed claims in chapter 7 cases.

Further, as to the priority claims of the IRS and the FTB, the motion makes no effort to brief the legal authority permitting the court to subordinate the distribution of remaining profits to Mr. Singleton and Black Market Transit.

11 U.S.C. § 510(c)(1) allows for subordination under principles of equitable subordination, for purposes of distribution, only "allowed claim to . . . another allowed claim or . . . allowed interest to . . . another allowed interest."

Here, however, the trustee is asking the court to subordinate allowed interests to allowed claims. The trustee is asking the court to subordinate the allowed interests of Mr. Singleton and Black Market Transit in the remaining profits generated from the albums awarded to them in the settlement, to the allowed priority tax claims held by the IRS and the FTB. There is no authority for subordination of an interest to a claim under 11 U.S.C. § 510(c)(1), the only provision of that statute which may apply here.

Finally, the motion will be denied because the trustee does not address the treatment of IRS' general unsecured claim. The motion will be denied.

16. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO SELL
MPD-3 — 11-25-13 [25]

Tentative Ruling: The motion will be granted.

This sale has been approved already in the related case of Ronald Duncan, the debtor's spouse.

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 (5555 Brinef Dr.) 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 sale of the 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. The sale is expected to generate approximately $11,000 that is to be divided equally between this estate and the estate of Ronald Duncan.

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).

17. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO SELL
MPD-4 — 11-25-13 [31]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee requests authority to sell for $182,600 the estate's interest in a duplex real property in Sacramento, California (Palm Avenue) to Bay Capital Properties. 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 the following interests:

(1) Unpaid property taxes for the first installment of 2013-2014 in the approximate amount of $2,400 (to be paid from escrow);

(2) unpaid delinquent property taxes of approximately $1,600 (to be paid from escrow);

(3) a deed of trust in favor of Michael and Mary Harris securing a claim for $51,000, recorded on January 25, 2012 (to be paid from escrow);

The trustee estimates that the payoff amount for this claim will be $127,000, including late fees and interest at 12% accruing since August 2012;

(4) a tax lien held by the FTB in the amount of $30,548.67, recorded on March 21, 2012 (not to be paid);

The trustee expects that this lien will be satisfied in full from the sale of the sale of the property on Brinef Drive;

(5) a mechanic's lien in favor of Meeks Lumber & Hardware in the amount of $1,983.55, recorded on January 11, 2013;

This lien will not be paid because it was recorded after the petition date in the Ronald Duncan case; Meeks has executed an escrow demand for $0.00;

(6) an abstract of judgment held by Floor Covering Installers in the amount of $40,716.00, recorded on January 23, 2013;

As Floor Covering recorded the lien after the petition date in the Ronald Duncan case, it has executed a release of the judgment lien; and

(7) an abstract of judgment held by Nancy Gartman for $950, recorded on September 23, 2013;

As Ms. Gartman recorded the lien after the petition date in the Ronald Duncan case, she has executed a demand from escrow in the amount of $0.00.

Also, the debtor is claiming an exemption of $1.00 in the property.

The estimated real estate commissions will be in the amount of $11,000.

The sale will generate some proceeds for distribution to creditors of the estate. The sale is expected to generate approximately $36,000 that is to be divided equally between this estate and the estate of Ronald Duncan.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b). The sale will not be approved free and clear of any liens, as all valid liens to be paid will be paid from escrow, and the FTB's lien will be satisfied from the sale of the property on Brinef Drive. 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).

But, the motion will be granted with one exception. The court will not approve the payment of any real estate commissions in connection with this case because the court has not approved the employment of any brokers in this case.

18. 13-34461-A-7 KATHLEEN DUNCAN — MOTION TO SELL
MPD-5 — 11-25-13 [36]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee requests authority to sell for $325,000 the estate's interest in a real property in Carmichael, California (Kenneth Avenue), along with two adjacent vacant residential lots, to Capital City Real Estate Investors, L.L.C.. 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 the following interests:

(1) Unpaid property taxes for the first installment of 2013-2014 in the approximate amount of $4,000 (to be paid from escrow);

(2) unpaid delinquent property taxes of approximately $22,500 (to be paid from escrow);

(3) a deed of trust in favor of Michael and Mary Harris securing a claim for $112,000, recorded on August 5, 2011 (to be paid from escrow);

The trustee estimates that the payoff amount for this claim will be $126,700, including late fees and interest;

(4) a tax lien held by the FTB in the amount of $30,548.67, recorded on March 21, 2012 (not to be paid);

The trustee expects that this lien will be satisfied in full from the sale of the sale of the property on Brinef Drive;

(5) an abstract of judgment held by Floor Covering Installers in the amount of $40,716.00, recorded on January 23, 2013;

As Floor Covering recorded the lien after the petition date in the Ronald Duncan case, it has executed a release of the judgment lien; and

(6) an abstract of judgment held by Nancy Gartman for $950, recorded on September 23, 2013;

As Ms. Gartman recorded the lien after the petition date in the Ronald Duncan case, she has executed a demand from escrow in the amount of $0.00.

Also, the debtor is claiming an exemption of $1.00 in the property.

The estimated real estate commissions will be in the amount of $19,500.

The sale will generate some proceeds for distribution to creditors of the estate. The sale is expected to generate approximately $148,000 that is to be divided equally between this estate and the estate of Ronald Duncan.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b). The sale will not be approved free and clear of any liens, as all valid liens to be paid will be paid from escrow, and the FTB's lien will be satisfied from the sale of the property on Brinef Drive. 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).

But, the motion will be granted with one exception. The court will not approve

the payment of any real estate commissions in connection with this case because the court has not approved the employment of any brokers in this case.

19. 11-34464-A-7 STUART SMITS — MOTION TO APPROVE COMPROMISE
TGM-11 — 11-20-13 [244]

Tentative Ruling: The motion will be granted in part.

The trustee requests approval of a settlement agreement between this estate along with the estate in the related Opaque Investors II, L.L.C. case, Case No. 11-34469, and Michael Phillips, resolving the estates' claims against Mr. Phillips for fraud, breach of fiduciary duties, and failing to defend and indemnify the estates in a state court action brought by Elias Bardis. The estates have a pending cross-complaint against Mr. Phillips in that action.

Under the terms of the compromise, Mr. Phillips will transfer his entire interest in Pacific Coast Exploration, L.L.C. and his 3.333% interest in Opaque Investors I, L.L.C., to the bankruptcy estate in the instant case. The transfers will be free and clear of any liens, claims or interests. In addition, Mr. Phillips will withdraw his proofs of claim in the instant and the Opaque Investors II bankruptcy cases. Mr. Phillips has filed a proof of claim in this case for $855,000.

In exchange, the estates will dismiss the pending cross-complaint against Mr. Phillips. The parties will execute mutual releases.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that Mr. Phillips is releasing and waiving any claims against the instant estate, including the $855,000 proof of claim, given that he will transfer interests in Pacific Coast and Opaque Investors I to the Smits estate, enabling both estates to liquidate their respective interests in assets owned and/or managed by Pacific Coast and Opaque Investors, 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.

The court makes no determination about whether and to what extent the business interests Mr. Phillips must transfer under the settlement are encumbered. By granting this motion, the court is not approving any transfers free and clear of liens, claims or interests.

20. 11-34464-A-7 STUART SMITS
TGM-12

MOTION TO
APPROVE COMPROMISE
11-20-13 [249]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Richard J. Azevedo, as trustee of the 1993 Azevedo Revocable Trust, Richard J. Azevedo individually, Barbara Rush, Leonard Rush, Barbara and Leonard Rush, as trustees of the Leonard and Barbara Rush 2005 Revocable Trust, Michael G. Klassen, Marsha L. Klassen, and Michael and Marsha Klassen, as trustees of The Michael G. and Marsha L. Klassen Family Trust.

The settlement resolves three proofs of claim (POCs 20, 21, 22) and the trustee's pending avoidance action disputing the validity of the claims:

- a $50,000 secured proof of claim filed by Mr. Azevedo as trustee (POC 20),

- a $500,000 secured proof of claim filed by Mr. Azevedo as trustee, on behalf of the Azevedo, Rush and Klassen trusts (POC 21), and

- a $400,000 secured proof of claim filed by Mr. Azevedo as trustee, on behalf of the Azevedo, Rush and Klassen trusts (POC 22).

As to POC 20, the trustee disputes the validity of the debt and purported secured classification of that debt.

As to POC 21, the Azevedo, Rush and Klassen trusts have claimed that the debt is secured by the debtor's interest in Opaque Investors I, L.L.C. and Pacific Coast Exploration. The trustee disputes that the debt in POC 21 was a loan, contending that with respect to the Azevedo and Klassen trusts, it is only a membership interest in Opaque I (which is different from the Opaque II entity that is in its own related bankruptcy case). She contends that the Rush trust does not have any membership interest in Opaque I.

As to POC 22, the Azevedo, Rush and Klassen trusts have claimed that the debt is secured by the debtor's interest in Smits/Azevedo Placer Vineyards Investors, L.L.C. (formed to hold 20% interest in Placer 290, L.L.C.). The trustee disputes that the debt in POC 22 was a loan secured by the debtor's interest in the Smits/Azevedo L.L.C.. She contends that the trusts hold only membership interests in the Smits/Azevedo L.L.C..

There is a pending avoidance action brought by the trustee, seeking the adjudication of the above disputes.

Under the terms of the compromise:

(1) POC 20 will be treated as a $50,000 general unsecured claim in favor of the Azevedo trust. None of the other parties have asserted interest in POC 20. The Azevedo trust and Mr. Azevedo have agreed that "any and all right, title, estate, lien, security interest, encumbrance, charge, claim, assignment and/or interest of Trustee Azevedo and/or Richard Azevedo in any property of the estate as defined in 11 U.S.C. section 541 of the Bankruptcy Case, including, without limitation in, against and/or concerning Debtor's ownership/member interests in Opaque I, Opaque II Investors L.L.C., Smits/Azevedo, Pacific Coast, Citizen Green Solutions, L.L.C. and/or any other applicable entity, and any and all proceeds thereof, is avoided, released, set aside and of no force and effect in any form whatsoever. Trustee Azevedo and Richard Azevedo each further acknowledge and agree that the provisions for subordination and assignment set forth in the Secured Promissory Note attached to Claim No. 20, are void and of no force and effect including concerning any and all cash or asset distributions from Opaque I." Docket 249 at 5.

(2) The parties agree "that Claim No. 21 shall be dismissed and withdrawn with prejudice. As to Claim No. 21 and all matters arising out of or related thereto, Settling Parties each confirm, acknowledge and agree that he, she, it and/or they have no right, title, estate, lien, security interest, encumbrance, charge, claim, assignment and/or interest in any property of the estate as defined in 11 U.S.C. section 541 of the Bankruptcy Case including, without limitation in, against and/or concerning Debtor's ownership/member interests in Opaque I, Opaque II Investors L.L.C., Smits/Azevedo, Pacific Coast, Citizen Green Solutions, L.L.C. and/or any other entity, and any and all proceeds thereof." Docket 249 at 6.

(3) The parties agree "that Claim No. 22 shall be dismissed and withdrawn with prejudice. As to Claim No. 22 and all matters arising out of or related thereto, Settling Parties each confirm, acknowledge and agree that he, she, it and/or they have no right, title, estate, lien, security interest, encumbrance, charge, claim, assignment and/or interest in the Property." Docket 249 at 6.

(4) The trustee will dismiss the pending avoidance action and each party will bear their own attorney's fees and costs.

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 settling parties have agreed to withdraw $900,000 in proofs of claim, given that only the Azevedo trust is retaining a proof of claim against the estate and that claim is now a nonpriority unsecured claim, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of

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

21. 10-38965-A-7 JOSEPH/LATSAMY CESAR — MOTION FOR SANCTIONS
DJH-6 — 8-26-13 [73]

Tentative Ruling: The motion will be denied.

The debtors are seeking damages against Wells Fargo Bank exclusively for violation of the automatic stay in this case.

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

This case was not filed until July 19, 2010. On July 20, 2013, the debtors asked this court to compel the bank to turn over their personal property to them. After a hearing on the motion on July 27, the court entered an order on July 29, directing the bank to turnover the debtors' personal property "in accordance with applicable nonbankruptcy law." The court also stated in the order that "[t]o the extent the debtors seek any additional relief against the respondents, they shall file and serve a motion that is set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2)." Docket 18.

The debtors claim that what the bank violated the stay in the next approximately one month, by requiring the debtors to sign a waiver of claims before releasing the personal property to them.

11 U.S.C. § 362(a)(1) and (2) provides that "Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title."

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).

A creditor who has violated the automatic stay is required to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection. The stay requires the creditor to direct a levying officer to return or reverse post-petition collections, such as bank account or wage levy. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

The court makes no determinations about any actions of the bank prior to the filing of the instant case on July 19, 2010. This motion asks solely for automatic stay violation damages. The stay did not exist prior to the filing of this case. Accordingly, there was no stay in effect, barring the actions of the bank, prior to July 19, 2010. While the debtors may have actionable claims for the bank's actions before July 19, such claims are not before this court and, even if they were, they are not properly before this court, as the resolution of such claims would require an adversary proceeding. Fed. R. Bankr. P. 7001(1), (7), (9). Also, the debtors are litigating state law claims arising from the bank's actions, in state court. Such claims then would not be properly before this court even if they were brought in an adversary proceeding, as this court would have no subject matter jurisdiction over the claims.

Further, there are no actionable allegations of automatic stay violations by the bank between July 19, 2010, when this case was filed, and July 29, 2010, when this court entered the order directing the bank to turn over the personal property to the debtors. The debtors complain that the bank removed some of the personal property from their former real property on July 22, 2010. Docket 75 ¶¶ 18, 19.

But, as of the July 19 petition date, the real property and personal property in question were both in the bank's possession. In other words, by removing the personal property from the real property on July 22, the bank did not violate the status quo of who had possession of the personal property as of the petition date. Thus, there are no actionable stay violations asserted by the motion, for the period between July 19 and July 29.

Next, the debtors contend that after July 29 the bank violated the stay in two ways: (1) by requiring them to execute a release of claims form on August 4 and 5, 2010 and (2) by refusing to allow them to continue retrieving their personal property. Docket 75 at 6-7.

The debtors claim that Kurt Colgan, "field agent" for the bank, requested the debtors to sign the waiver three different times while they were retrieving their personal property on August 4 and 5, 2010. Docket 75 ¶¶ 28-32. When the debtors refused to sign the release for the last time on August 5, Mr. Colgan allegedly ordered the debtors off the premises. They complain that thereafter,

from August 5 until September 4, they were not given access to their former premises to continue retrieving their personal belongings. Docket 75 ¶¶ 35-37.

The court will deny stay violation damages on the basis of laches.

A successful laches defense requires proof of (I) lack of diligence by the party against whom the defense is asserted and (ii) prejudice to the party asserting the defense. Beaty v. Selinger (In re Beaty), 306 F.3d 914, 926-27 (9th Cir. 2002); Sole Survivor Corp. v. Buxbaum, Case No. CV 07-3858-GW, 2009 WL 210471, at *7 (C.D. Cal. Jan. 22, 2009) (upholding the bankruptcy court's ruling denying a motion for contempt as "unconscionably late" as the movant "waited more than two years and four months to bring [it]").

"As observed in Matthews v. Rosene, 739 F.2d 249, 251 (9th Cir.1984), in the context of orders issued in violation of the automatic stay, a bankruptcy court, as a court of equity, must be guided by equitable principles in exercising its jurisdiction. Hence, the Bankruptcy Court can consider whether a party has acted in a timely fashion in seeking discretionary relief."

Sole Survivor at 7 (citing Matthews at 251).

"Equity . . . fashions its own time limitations, through laches, the doctrine . . . that equity will not aid a party whose unexcused delay would, if his suit were allowed, prejudice his adversary. (Citation omitted). The bare fact of delay creates a rebuttable presumption of prejudice. (Citation omitted)." Fireside Thrift of Hawaii, Inc. v. Kealoha (In re Kealoha), 2 B.R. 201, 215 (Bankr. D. Hawaii 1980) (quoting Int'l Tel. and Telegraph Corp. v. General Tel. and Elecs. Corp., 518 F.2d 913, 926 (9th Cir. 1975)).

There is no probative explanation by the debtors about why the court should consider their claims for stay violation damages, three years after the purported misconduct took place. The alleged misconduct took place after this court entered an order expressly telling the debtors to file a motion if they sought further relief as to the bank, and it took place while the debtors' case was still pending. The debtors obtained their discharge on November 16, 2010 and the case was not closed until March 9, 2012. The debtors did not file any further motions with this court to complain about the bank's post-petition actions. This motion was not filed until August 27, 2013. The debtors have clearly lacked diligence in bringing this motion.

More, instead of the debtors seeking relief from this court for the contended stay violations, they filed a state court action against the bank on May 25, 2012. That litigation, after being removed to district court and then remanded back to state court, is still pending. The claims in that litigation encompass the bank's purported post-petition misconduct.

The debtors have not overcome the presumption of prejudice to the bank, while the bank has established that it is prejudiced by this motion.

The debtors filed the instant motion as an afterthought, only after they lost on the bank's demurrer to their original state court complaint. Docket 182, Ex. 9 at 5-8. Forcing the bank to litigate events in this court three years after they took place and while such events have been in litigation in state court and federal district court for over one and one-half year is prejudicial to the bank. It gives the debtors a second - much delayed - chance at litigating events on which they seem likely to lose in state court.

The court rejects the debtors' explanation, about failing to bring this motion earlier, that they "were previously represented by counsel who was disbarred and were never made aware of their rights to bring such a motion after discharge. Docket 243 at 1-2. Neither the court nor the bank can be responsible for the debtors' choice of counsel. The fact that the debtors may have been represented by incompetent counsel is an issue that should have been resolved between them and that counsel.

Laches warrants the denial of this motion. The debtors have lacked diligence in bringing the subject motion and this delay has caused prejudice to the bank. The motion will be denied.

22. 12-33467-A-7 RONALD DUNCAN — MOTION TO SELL
DNL-8 — 11-25-13 [200]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $182,600 the estate's interest in a duplex real property in Sacramento, California (Palm Avenue) to Bay Capital Properties. The trustee is asking for waiver of the time period of Fed. R. Bankr. P. 6004(h) and for allowance of the payment of the real estate broker fees.

This motion will be granted in accordance with the ruling on the identical motion (DCN MPD-4) by the chapter 7 trustee in the related bankruptcy case of Kathleen Duncan, Case No. 13-34461, except that the court will authorize in this case payment of a commission to Lyon Real Estate in accordance with the order approving Lyon's employment. See Docket 159.

23. 12-33467-A-7 RONALD DUNCAN — MOTION TO SELL
DNL-9 — 11-25-13 [206]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $325,000 the estate's interest in a real property in Carmichael, California (Kenneth Avenue), along with two adjacent vacant residential lots, to Capital City Real Estate Investors, L.L.C.. The trustee is asking for waiver of the time period of Fed. R. Bankr. P. 6004(h) and for allowance of the payment of the real estate broker fees.

This motion will be granted in accordance with the ruling on the identical motion (DCN MPD-5) by the chapter 7 trustee in the related bankruptcy case of Kathleen Duncan, Case No. 13-34461, except that the court will authorize in this case payment of a commission to Lyon Real Estate in accordance with the order approving Lyon's employment. See Docket 188.

24. 11-34469-A-7 OPAQUE INVESTORS II, L.L.C. — MOTION TO APPROVE COMPROMISE
HSM-3 — 11-15-13 [128]

Tentative Ruling: The motion will be granted in part.

The trustee requests approval of a settlement agreement between this estate along with the estate in the related Stuart Smits case, Case No. 11-34464, and

Michael Phillips, resolving the estates' claims against Mr. Phillips for fraud, breach of fiduciary duties, and failing to defend and indemnify the estates in a state court action brought by Elias Bardis. The estates have a pending cross-complaint against Mr. Phillips in that action.

Under the terms of the compromise, Mr. Phillips will transfer his entire interest in Pacific Coast Exploration, L.L.C. and his 3.333% interest in Opaque Investors I, L.L.C., to the bankruptcy estate of Stuart Smits. The transfers will be free and clear of any liens, claims or interests. In addition, Mr. Phillips will withdraw his proofs of claim in the instant and the Stuart Smits bankruptcy cases.

In exchange, the estates will dismiss the pending cross-complaint against Mr. Phillips. The parties will execute mutual releases.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that Mr. Phillips is releasing and waiving any claims against the instant estate, given that he will transfer interests in Pacific Coast and Opaque Investors I to the Smits estate, enabling both estates to liquidate their respective interests in assets owned and/or managed by Pacific Coast and Opaque Investors, 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.

The court makes no determination about whether and to what extent the business interests Mr. Phillips must transfer under the settlement are encumbered. By granting this motion, the court is not approving any transfers free and clear of liens, claims or interests.

25. 13-23380-A-7 DOUGLASS DUNN — MOTION TO RECONSIDER 10-24-13 [48]
DEF-4

Tentative Ruling: The motion will be denied.

The debtor is asking the court to reconsider its June 3, 2013 ruling granting in part a motion to avoid a lien held by Sequoia Concepts, Inc. because although "[w]hen this case was originally filed, [the debtor] believed the value of the property was $350,000," "[he] know [*sic*] believe[s] that the value of the property is $315,000." Docket 50 ¶¶ 6, 7.

The court held a hearing on the lien avoidance motion on June 3, 2013 but no order has been entered yet because the debtor has not submitted an order. Docket 22.

This motion will be denied for two reasons.

First, the motion makes no effort to cite or brief the legal authority for this court to reconsider its ruling on the lien avoidance motion. For example, Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

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

There is no mention of Rule 60(b) in this motion and there is no discussion of whether this motion is being brought timely.

Further, assuming the debtor claims there to have been a mistake or excusable neglect in the prosecution of the lien avoidance motion, there is no merit on this record for relief on such grounds.

In the lien avoidance motion, the $350,000 value of the property was based on the debtor's opinion of value. Docket 15 ¶ 6. "In my opinion the value of my residence is $350,000." Id.

A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor's opinion of value for the property in the lien avoidance motion was also consistent with what the debtor said in the schedules about the value of the property. In Schedule A, the value of the property is still $350,000. Docket 1, Schedule A.

Thus, there was no mistake. The debtor had an opinion regarding the value of the property. The debtor did not make an error when writing down that opinion in the schedules and the declaration. His opinion may be now different, but, at that time, the debtor's opinion of value for the property was admissible and sound evidentiary basis for granting in part the lien avoidance motion.

The ruling granting in part the lien avoidance motion (DCN DEF-1) follows below.

Tentative Ruling: The motion will be granted in part.

A judgment was entered against the debtor in favor of Sequoia Concepts, Inc. for the sum of $25,588.93 on January 23, 2007. The abstract of judgment was

recorded with Amador County on June 4, 2007. That lien attached to the debtor's 50% interest in a residential real property in Sutter Creek, California. As of the petition date, the amount of the judgment was $28,835.12. See Schedule D.

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 $350,000 as of the date of the petition. The unavoidable liens total $172,742 on that same date, consisting of a first mortgage in favor of Citimortgage in the amount of $136,282 and a second mortgage in favor of Wells Fargo Bank in the amount of $36,460. This leaves $177,258 of equity in the property ($350,000 minus $172,742). As the debtor owns one-half interest in the property, he is entitled only to one-half interest in this equity, which is $88,629 ($177,258 divided by 2). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $75,000 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 $13,629 in equity to support the judicial lien ($88,629 of equity subject to exemption minus $75,000 exemption). Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of $15,206.12 ($28,835.12 lien minus $13,629 in available equity for lien) and its fixing to the extent of $15,206.12 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

Docket 22.

Finally, in this motion, the debtor simply says that he now has a different opinion about the value of the property. Docket 50. He does not give a factual reason for why this court should reconsider the ruling on the lien avoidance motion. Although the debtor's opinion of value is admissible evidence and the court considered it in granting in part the lien avoidance motion, nothing requires the court to reconsider its ruling six months later just because the debtor has now changed his opinion of value.

More, the debtor's new opinion of value is based on the fact that an appraiser has appraised the property as of the petition date with this new value, $315,000. The court can deduce then that the debtor's opinion of value for the property is different now only because he has discovered another person, the appraiser, who may proffer admissible and providence evidence of value as well, and his opinion is different than what was the debtor's opinion in connection with the lien avoidance motion. This means that debtor did not make a mistake in his opinion of value on the lien avoidance motion. He merely now disagrees with that opinion.

The debtor's opinion of value was accurately expressed by the debtor and relied on by the court. The debtor is now estopped from claiming a lower value merely because he does not like the outcome of his motion – an outcome that was easily predicable based on a review of the motion and the application of basic arithmetic.

This motion will be denied.

26. 13-34696-A-7 JEFFREY JOHNSON
JMD-2
JAMES DARRAH VS.

AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-2-13 [32]

Tentative Ruling: The motion will be granted.

The movant, James Darrah, moves for relief from stay with respect to a mooring at a boat dock in Stockton, California.

The debtor opposes the motion, challenging the movant's unlawful detainer state court complaint against him and arguing that the movant has no standing to bring this motion because he does not own the dock. The debtor claims that his boat is not on the movant's property but is on property owned by the Stockton Golf & Country Club.

The debtor rents space for a boat on a dock in Stockton, California. The movant served the debtor with a 60-days notice of termination of the tenancy on July 10, 2013. The movant initiated an unlawful detainer action against the debtor on September 17, 2013. The debtor's demurrer to the unlawful detainer complaint was denied by the state court on November 12, 2013. The debtor filed the instant bankruptcy case on November 18, 2013. Trial in the unlawful detainer action was set for November 25, 2013.

The movant asks for relief to complete the unlawful detainer action against the debtor and to obtain possession of the property.

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

Also, this court does not finally determine the extent, validity or priority of interest in property on a motion. Fed. R. Bankr. P. 7001(2). Such determinations require an adversary proceeding.

The movant has established a colorable claim to enforce a right to the subject property, including to prosecute an unlawful detainer action against the debtor.

There is no dispute that the debtor is renting the property. The movant has executed a declaration under the penalty of perjury stating that "I am the owner and landlord of the property in the underlying unlawful detainer action. I have been renting a boat mooring to Jeffery B. Johnson at 3540 Rainier Ave, Dock 2, Stockton California since approximately 2004. It is on a month to month tenancy for $125 per month." Docket 28 at 1.

The debtor has admitted that he has been paying rent for the property to the movant. "The Debtor assumed that the Darrah's were the landowners of the property and paid a sum of thirteen thousand-five hundred ($13,500) in the past ten (10) years." Docket 35 at 2. The debtor is merely disputing that the movant owns the dock where the property is located.

The movant has established a colorable claim that he is entitled to prosecute an unlawful detainer action against the debtor in state court. The debtor's

challenge of the movant's ownership interest in the property can be raised in state court.

The debtor's admission of paying the movant $13,500 in the last ten years also bolsters the movant's colorable claim to enforce a right as to the property. Docket 35 at 2. The fact that the movant has been collecting rent from the debtor for the last ten years tends to indicate that the movant has at least some interest in the property.

Additionally, the debtor's demurrer to the unlawful detainer complaint has been rejected by the state court. Assuming the debtor raised in the demurrer the issues he is raising here, the debtor cannot collaterally challenge the rulings of the state court in this court. The state trial court has its own appellate system and this court cannot serve as a court of appeal for the state trial court. In fact, this court is required to give full faith and credit to state court orders and judgments.

The movant has established a colorable claim to the property, allowing this court to adjudicate this motion - although this court is not finally deciding the movant's interest in the property. That is for the state court to decide. The court notes that the debtor filed a state court action to quiet title of the property he is renting on November 11, 2013.

The fact that the debtor has been unable to raise "title issues" in the unlawful detainer action because that is a summary proceeding, just like this proceeding, does not give this court the authority to decide issues it cannot decide. The debtor's remedies lie with the state court. If the state court has refused to stay the unlawful detainer proceeding until the action to quiet title is completed, the debtor's remedy is - once again - with the California appellate courts, such as the California Court of Appeal, not with this court.

The motion will be granted. This is a liquidation proceeding and the debtor has no interest in the property. The debtor is merely renting the property. 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 complete its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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

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

27. 12-39297-A-7 GLORIA JUAREZ — MOTION TO AVOID JUDICIAL LIEN
AKH-1
VS. ENTERPRISE RENT A CAR COMPANY — 11-18-13 [22]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Enterprise Rent A Car Company for the sum of $22,295.42 on December 22, 2008. The abstract of judgment was recorded with San Joaquin County on July 1, 2009. That lien attached to the debtor's residential real property in Stockton, California.

The debtor is asking the court to avoid the lien under 11 U.S.C. § 522(f).

The motion will be denied because it makes no effort to apply the formula prescribed by 11 U.S.C. § 522(f)(1)(A). The motion does not even state the unavoidable liens against the property. Also, the motion refers to an exemption of the property under Cal. Civ. Proc. Code § 704.730, but the property was not claimed as exempt under that statute in Schedule C. Given these deficiencies, the motion will be denied.

28. 12-39297-A-7 GLORIA JUAREZ — MOTION TO AVOID JUDICIAL LIEN
AKH-2
VS. ALLIANCE UNITED INSURANCE COMPANY — 11-18-13 [27]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Alliance United Insurance Company for the sum of $7,785.37 on December 31, 2009. The abstract of judgment was recorded with San Joaquin County on April 30, 2010. That lien attached to the debtor's residential real property in Stockton, California.

The debtor is asking the court to avoid the lien under 11 U.S.C. § 522(f).

The motion will be denied because it makes no effort to apply the formula prescribed by 11 U.S.C. § 522(f)(1)(A). The motion does not even state the unavoidable liens against the property. Also, the motion refers to an exemption of the property under Cal. Civ. Proc. Code § 704.730, but the property was not claimed as exempt under that statute in Schedule C. Given these deficiencies, the motion will be denied.

THE FINAL RULINGS BEGIN HERE

29. 13-31501-A-7 MONICA ROBINETT
RMD-1
CALIFORNIA HOUSING FINANCE AGENCY VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
11-7-13 [14]

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

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

The movant, California Housing Finance Agency, seeks relief from the automatic stay as to a real property in Corning, California.

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

As to the estate, the analysis is different. The trustee filed a report of no distribution on October 9, 2013. This is cause for the granting of relief from stay as to the estate.

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

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

The property has a value of $88,335 and it is encumbered by claims totaling approximately $84,964. The movant's deed is in first priority position and secures a claim of approximately $80,738.

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

30. 13-34610-A-7 HAI TRAN AND KELLY AU — MOTION TO COMPEL ABANDONMENT 11-18-13 [7]
LCL-1

Final Ruling: The motion will be dismissed without prejudice.

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

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

31. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY
LUSARDI CONSTRUCTION CO. VS. — 11-14-13 [551]

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the trustee. Docket 555.

32. 13-24614-A-7 JOSEPH ROBERTO — MOTION TO ABANDON
DNL-3 — 11-8-13 [27]

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

The motion will be granted.

The trustee wishes to abandon: (1) the estate's interest in the debtor's sole proprietorship carpet supply business, Champion Floors To Go (scheduled value of $8,000), (2) the estate's interest in the business receivables (scheduled value of $6,400), (3) the estate's interest in the business franchise license (scheduled value of $1,000), and (4) the estate's one-half interest in a commercial real property in South Lake Tahoe, California (scheduled aggregate value of property is $320,000).

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

The debtor has claimed the business, receivables and franchise license fully exempt in Schedule C. Also, the real property is encumbered by claims totaling $302,000. Schedule D.

Given the above and given that there is no sufficient equity in the real property to pay liquidation costs (8% to 10% of the sales price) and generate a dividend for unsecured creditors, the court concludes that the property items are of inconsequential value to the estate. The motion will be granted.

33. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION TO EXTEND DEADLINE
TAA-2 — 10-30-13 [35]

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

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

The motion will be granted.

The trustee requests a 59-day extension, from November 2, 2013 to December 31, 2013, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was November 2, 2013. Docket 38. The instant motion was filed on October 30, 2013. Thus, the motion complies with the temporal requirements of the rule.

The trustee has discovered some discrepancies in the debtors' reporting of income in Schedule I and the statement of financial affairs. He needs more time to investigate whether and to what extent the debtor is generating income from the operation of a business. The trustee needs more time to determine "the relationship between Debtor's prior income from self-employment and his current income from employment."

Even though the court granted one extension of the deadline once already, from August 30 to November 2, the trustee was unable to meet with the debtors' counsel due to conflicts in schedule until mid-November. That is why the trustee requests another extension of time.

The foregoing is cause for granting of the extension. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to December 31, 2013.

34. 13-27117-A-7 DAVID/VICTORIA EHRHARDT — MOTION TO AVOID JUDICIAL LIEN
MTM-1
VS. GCFS, INC. — 11-15-13 [39]

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

The debtor served the motion on GCFS, Inc. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 43.

Further, even if the court were not to dismiss the motion, it would have been denied. The references in the motion papers to the judgment, abstract of judgement and its recordation are hearsay. Fed. R. Evid. 802. The court does not have the recorded abstract of judgment in the record.

Additionally, the debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr.

E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the petition date.

Yet, the evidence of value for the real property implicated by this motion is based on an appraisal valuing the property as of November 12, 2012, even though the petition was not filed until May 24, 2013.

35. 13-33618-A-7 CAROLE BAIRD — MOTION FOR RELIEF FROM AUTOMATIC STAY
JTK-1 — 11-14-13 [26]
SCOTT LEE VS.

Final Ruling: The hearing on this motion has been continued to January 13, 2014 at 10:00 a.m. Docket 43.

36. 13-29523-A-7 ANTONIO/WENDY LOZOYA — MOTION FOR RETURN OF PROPERTY OF THE BANKRUPTCY ESTATE
DJC-1 — 11-16-13 [20]

Final Ruling: The motion will be dismissed without prejudice.

The debtors move for an order directing the Sacramento County Sheriff to return $1,071.08 held by it due to a levy by CACH, L.L.C. and Mandarich Law Group, LLP. However, the motion will be dismissed without prejudice because the Sheriff has not been served with the motion papers. Docket 24.

Also, in order to seek turnover of property, an adversary proceeding is necessary. The only instance in which turnover may be sought by motion is when a trustee seeks to compel a debtor to return property of the estate. See Fed. R. Bankr. P. 7001(1).

37. 13-25844-A-7 LEVI/KIMBERLEE DELANEY — MOTION TO REDEEM
DBJ-4 — 9-18-13 [45]

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

The debtor served the motion on Santander Consumer without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 57 at 3. Santander Consumer is a corporation that must be served in accordance with Fed. R. Bankr. P. 7004(b)(3).

38. 12-23448-A-7 CHRISTOPHER/CAROL BOSCH
SLF-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $6,000)
11-18-13 [69]

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

The motion will be granted.

The Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $6,000, reduced from 8,390.50 in fees and $318.92 in expenses. This motion covers the period from December 4, 2012 through the present. The court approved the movant's employment as the trustee's attorney on March 8, 2013. The court notes that the movant has not charged for services rendered from December 4, 2012 until February 12, 2013. In performing its services, the movant charged hourly rates of $90, $250, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing a stipulation for extension of time to object to exemptions, (2) obtaining approval of settlement of claims against the City of Tracy, (3) negotiating a settlement with the debtors about their exemption of the proceeds they received from the settlement and about their entitlement of tax refunds, (4) analyzing the reasonableness of the fees received by counsel who represented the debtors in the litigation with the City of Tracy, (5) reviewing a compensation motion filed by the debtors' counsel who represented them in the litigation, (6) negotiating compromise with the debtors' counsel, (7) obtaining court approval of settlement with the debtors' counsel, 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.

39. 13-31264-A-7 JESSIE/ILUMINADA HUVALLA
PD-1
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-13 [12]

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

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

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

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

Given the entry of the debtor's discharge on December 3, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $60,020 and it is encumbered by claims totaling approximately $145,412. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 15, 2013.

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

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

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

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

40. 12-33467-A-7 RONALD DUNCAN — MOTION TO ABANDON
DNL-7 — 11-15-13 [189]

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

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in four real properties, including 7421 Hickory Avenue in Orangevale, California; 7429 Hickory Avenue in Orangevale, California; 6400 Larchmont Drive in North Highlands, California; and a lot of land on Walnut Avenue in Sacramento, California.

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

The trustee has determined that 7421 Hickory Avenue has a value of $120,000, while it is encumbered by claims totaling approximately $240,000.

The trustee has determined that 7429 Hickory Avenue has a value of $850,000, while it is encumbered by claims totaling approximately $899,044.

The trustee has determined that 6400 Larchmont Drive has a value of $130,000, while it is encumbered by claims totaling approximately $174,435.

The trustee has determined that the lot of land on Walnut Avenue is no longer owned by the debtor, as it was remainder of a common area from a planned unit development that was eventually transferred to the home owner's association. The debtor has scheduled the lot's value at $1.00.

See Docket 191.

Given the foregoing, the court concludes that the properties are of inconsequential value to the estate. The motion will be granted.

41. 13-21767-A-7 DICK/KAREN HUIE — MOTION TO APPROVE COMPROMISE 11-13-13 [26]
JRR-1

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Jack Huie, the debtor's brother, resolving the estate's avoidance claim for the debtors' transfer of gas and mineral rights to Jack Huie pre-petition. The trustee believes that the transferred rights had a value of $35,000 at the time of transfer.

Under the terms of the compromise, Jack Huie will pay $20,000 to the estate in full satisfaction of the estate's claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that Jack Huie claims to have a security interest in the gas and mineral rights, 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.

42. 13-26367-A-7 JOSE CRUZ MARTINEZ AND DELIA CRUZ — MOTION TO AVOID JUDICIAL LIEN
WSS-3
VS. CACH, L.L.C. — 11-15-13 [34]

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 Debtor Jose Cruz in favor of Cach, L.L.C. for the sum of $42,346.18 on October 3, 2011. The abstract of judgment was recorded with Placer County on December 3, 2012. That lien attached to the debtor's residential real property in Granite Bay, 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 $460,000 as of the date of the petition. The unavoidable liens total $524,578 on that same date, consisting of a sole mortgage for $489,095 in favor of JPMorgan Chase Bank and a tax lien for $35,483 in favor of the IRS. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $5,000 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).

43. 13-30071-A-7 JON/CARRIE ROSTAD — MOTION FOR RELIEF FROM AUTOMATIC STAY
MET-1
BANK OF THE WEST VS.
11-14-13 [28]

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, Bank of the West, seeks relief from the automatic stay as to a real property in Truckee, California. The property has a value of $280,000 and it is encumbered by claims totaling approximately $284,549. The movant's deed is in third and last priority position and secures a claim of approximately $51,394.

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 25, 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 (after accounting for senior encumbrances), the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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

44. 13-31771-A-7 DUANE/LURA ANDERSON — MOTION TO COMPEL ABANDONMENT
DAB-1 — 10-30-13 [13]

Final Ruling: The motion will be dismissed without prejudice.

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

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

45. 13-32073-A-7 DIANE DALLAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 11-12-13 [12]
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 a real property in Stockton, California. The property has a value of $130,742 and it is encumbered by claims totaling approximately $155,189. The movant's deed is the only deed on the property and secures a claim of approximately $155,039.

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

46. 13-25976-A-7 MICHAEL/ALESIA BARNES — MOTION FOR RELIEF FROM AUTOMATIC STAY
NATIONSTAR MORTGAGE, L.L.C. VS. — 10-28-13 [40]

Final Ruling: The motion will be dismissed without prejudice.

The motion is not accompanied by a separate notice of hearing as required by Local Bankruptcy Rule 9014-1(d)(2).

Further, the court's local rules and general orders require that the motion, notice of hearing, memorandum of points and authorities, supporting declaration(s), exhibit(s), and proof of service be filed as separate documents. This permits anyone examining the docket to determine if these documents have been filed, without having to examine every document filed in support of the motion.

Here, the movant has filed all of the above papers as a single document. Docket 40.

Finally, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion papers do not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

47. 13-30376-A-7 ANTHONY/TRICIA EGAN — MOTION TO AVOID JUDICIAL LIEN
CACH-1
VS. MOHAWK SERVICING, INC. — 11-13-13 [16]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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 Debtor Tricia Egan, f.k.a. Tricia Waters (Docket

1 at 1) in favor of Mohawk Servicing, Inc. for the sum of $9,834.46 on February 20, 2010. The abstract of judgment was recorded with Placer County on July 28, 2010. That lien attached to the debtor's residential real property located in Granite Bay, 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 $675,000 as of the date of the petition. The unavoidable liens total $741,998.94 on that same date, consisting of a mortgage in favor of Bank of America. 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).

48. 12-36177-A-7 EARL FAVINGER — MOTION TO EMPLOY
DNL-4 — 11-7-13 [65]

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

The motion will be granted.

The trustee requests approval to employ Gonzales & Sisto, LLP as an accountant for the estate. G&S will assist the estate with preparing tax returns for 2011 and 2012. The proposed compensation is a flat fee of $2,400. The movant requests approval of payment of the compensation, without further order of the court.

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

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

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

49. 13-30389-A-7 CHARLES/VICTORIA TINGLER MOTION TO
UST-2 EXTEND TIME
11-8-13 [17]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the trustee, 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 U.S. Trustee seeks a 84-day extension, from November 8, 2013 to January 31, 2014, of the deadline for filing motions to dismiss under 11 U.S.C. § 707(b).

11 U.S.C. § 707(b) and Bankruptcy Rule 1017(e)(1) provide that dismissal motions may be brought by the U.S. Trustee and must be filed within 60 days of the first date set for the meeting of creditors. The court may grant an extension upon a showing of cause. The motion for an extension must be filed before the expiration of the 60-day deadline. Bank. R. 1017(e)(1).

The initial meeting of creditors here was set for September 9, 2013. 60 days from that date was November 8, 2013. This motion was filed on November 8. Thus, the motion complies with the temporal requirements of both Rules 1017(e)(1).

The trustee, interested parties and the movant need additional time to review documents pertaining to the debtors' disposal of a $363,843 tax refund they received in 2008. The court also notes that the debtors did not appear at the November 4 meeting of creditors and the debtor did not appear at the November 18 meeting of creditors.

The foregoing is cause for extension of the deadline. The motion will be granted as to the movant, the trustee and the debtors' creditors. The deadline will be extended to January 31, 2014.