UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 12, 2015 at 10:00 a.m.

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

1, 4,

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a 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 FEBRUARY 9, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 26, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 2, 2015. 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. 11-25317-A-7 MOHAMMAD/SOUSAN MOTIEY — MOTION TO APPROVE COMPROMISE
DNL-2 — 12-19-14 [70]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate, on one hand, and Sara Motiey, Sahar Motiey, Sadaf Motiey and the debtors, on the other hand, who are the defendants in a fraudulent conveyance action initiated by the trustee. The settlement resolves the estate's fraudulent conveyance claims against the defendant parties, involving the pre-petition transfer of an interest in a real property in Placerville, California.

Under the terms of the compromise, the defendants will pay $100,000 to the estate in full satisfaction of the claims, within 120 days of the date the order approving the settlement agreement is entered.

In the event the defendants do not pay the $100,000 timely to the estate, the court presiding over the fraudulent conveyance action shall enter a judgment declaring the trustee to own the real property. The trustee then will have the right to market and sell the property, retaining $100,000 of the net sales proceeds, in addition to the funds necessary to pay all administrative claims and taxes.

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 estate will recover at least $100,000 from the settlement, given that the timely proofs of claim total approximately $106,657, 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.

2. 13-31219-A-7 DUSTIN SIEPERT — MOTION TO APPROVE COMPENSATION OF TRUSTEE
JRR-4 — 12-1-14 [60]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee, John Roberts, has filed his first and final motion for approval of compensation. The requested compensation consists of $19,325 in fees and $633.38 in expenses, for a total of $19,958.38. The services for the sought compensation were provided from August 29, 2013 through November 25, 2014. The sought compensation represents 55.5 hours of services.

The motion will be denied for several reasons. First, the motion makes no effort to establish that the proposed compensation is within the cap set by 11 U.S.C. § 326(a). The movant's final report is not even part of the record on the motion.

Second, in describing the movant's services to the estate, the motion mentions only one sale motion prepared and prosecuted by the movant, but the movant filed and prosecuted two motions for the sale of the estate's interest in the commercial property in Loomis, California. The court denied the movant's first motion to sell because he had not marketed the property, the proposed sales price ($262,500) was below market value and the proposed return to the estate was only $33,437. Docket 27.

After the court denied the movant's first sale motion, the movant employed a real estate broker, marketed the property and brought another motion to sell the property. That motion proposed to sell the property at a substantially higher price ($643,000), generating $198,952.12 for the estate. Dockets 33 & 42.

The instant motion does not mention or discuss any of the foregoing. Specifically, it does not establish that the compensation sought pertaining to the first sale motion is reasonable or the movant's services in connection with that first motion were necessary. Accordingly, the instant motion will be denied.

3. 13-26521-A-7 ANDREI/YELENA VIHODET — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 12-11-14 [56]
MERCEDES-BENZ FIN'L SVCS., USA, L.L.C. VS.

Tentative Ruling: The motion will be denied without prejudice.

The movant, Mercedes-Benz Financial Services, U.S.A., L.L.C., seeks relief from the automatic stay with respect to a 2012 Mercedes-Benz Sprinter.

Relief under section 362(d)(2) is improper because there is equity in the vehicle. According to the movant, the vehicle has a value of $26,000 and its secured claim is approximately $15,737. This leaves approximately $10,262 of equity in the vehicle. Given this equity, the court will not grant relief under section 362(d)(2).

The movant has an equity cushion of approximately $10,262. This equity cushion

is sufficient to adequately protect the movant's interest in the vehicle until the trustee administers the vehicle for the benefit of the estate or the stay is automatically terminated under section 362(h).

The case was converted from chapter 13 on October 31, 2014 and the initial meeting of creditors was held only on December 10, 2014. The trustee filed a notice of assets on January 2, 2015. The court will not deprive the trustee of the opportunity to administer this asset for the benefit of the estate. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either.

Moreover, the stay is about to be automatically dissolved unless the debtor performs his intention as to the vehicle, as stated in the statement of intention, or the trustee intervenes by filing a motion under section 362(h)(2).

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on May 10, 2013 as a chapter 13 proceeding. The case was converted to chapter 7 on October 31, 2014. The initial meeting of creditors was scheduled for December 10, 2014. Docket 48. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 30, 2014.

The debtor filed a statement of intention on the conversion date, indicating an intent to redeem the vehicle. Docket 45.

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

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

In other words, the debtor has until January 9, 2015 to redeem the vehicle. If the debtor does not timely redeem the vehicle or timely file a motion for extension of the deadline to redeem the vehicle, and the trustee does not timely file a motion to keep the vehicle into the estate, the stay will be automatically dissolved and the vehicle will no longer be part of the bankruptcy estate. See 11 U.S.C. § 362(h).

4. 13-33728-A-7 MARIA KESSLER
BHS-2

MOTION TO
APPROVE COMPROMISE
12-18-14 [38]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate, on one hand, and Vernon Bray and the debtor, on the other hand, resolving the estate's fraudulent conveyance claims for the debtor's transfer of assets of a towing business to her son, Vernon Bray.

Under the terms of the compromise, Vernon Bray and the debtor will pay $33,000 to the estate in full satisfaction of the claims. The equity in the vehicles of the business totals approximately $22,700 and the trustee estimates the remainder of the business to have a value of approximately $11,000.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the trustee is receiving the approximate value of the assets of the business 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.

5. 11-35532-A-7 WILLIAM ROBERTS
FWK-2
VS. KELKRIS ASSOCIATES, INC.

MOTION TO
AVOID JUDICIAL LIEN
12-2-14 [26]

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to avoid the judicial lien of Kelkris

Associates, Inc., against his real property in Folsom, California.

The respondent creditor, Kelkris Associates, Inc., opposes the motion.

The motion will be denied. First, Docket 29, which supposedly contains the exhibits to the motion, is devoid of any attachments. Thus, the motion is not supported by adequate evidence.

Second, the motion refers to the recordation of an abstract of judgment, even though the abstract is not part of the motion record. Hence, the reference to the recordation is hearsay. Fed. R. Evid. 802.

Third, the debtor has not claimed an exemption in the subject real property. Docket 1.

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

The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." The absence of an exemption claim in Schedule C reflects no right of the debtor to claim any exemption in the absence of liens. Docket 1. And, if the debtor is not entitled to an exemption in the absence of liens, he may not claim an impairment of such an exemption.

Fourth, the court will overrule the creditor's objection based on laches. The creditor complains that this motion is being filed over three years after the case was filed on June 22, 2011, causing extra difficulty and expense to the creditor in having to value the property as of that date.

A successful laches defense requires a 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).

The debtor asserts that he was not aware of the creditor's lien on the property until approximately October 2014.

Nevertheless, the debtor must have received a notice in the mail in or about July 2010, when the creditor purportedly recorded the lien, from the Sacramento County Recorder's Office, where the abstract was recorded and the lien was created. County recorder offices have the practice of regularly informing judgment debtors when abstracts of judgments against them are recorded.

More, the court has no evidence from the debtor that he did not receive notice of the lawsuit that resulted in the judgment and eventual lien. The debtor does not deny receiving notice of the lawsuit in his declaration in support of the reply. Docket 36. The debtor appears to have known of the lawsuit and

eventual judgment entered against him. As such, the debtor should have exercised due diligence in monitoring recordings with the Sacramento County Recorder.

On the other hand, the court is not convinced that the creditor is prejudiced by the late filing of this motion. The only evidence to support the creditor's purported prejudice is the declaration of Kelly Parsons-O'Brien, a collections manager for the creditor, where she states that:

"The delay in filing this motion to avoid lien causes Kelkris to face the difficult and costly task of hiring an expert real estate appraiser to offer an opinion as to the value of Debtor's property in 2011, which is more than three years past. Such an opinion would be difficult and speculative due to the passage of time."

Docket 33. The court disagrees. This is an opinion rendered by a collections manager and not an appraiser and/or real estate broker. Ms. Parsons-O'Brien has not been qualified to render an opinion about the difficulty and cost of obtaining a real property valuation as of over three years ago.

And, even if she were qualified to render such an opinion, she offers no facts upon which her opinion is based. Fed. R. Evid. 701(c), 702(a), (b), 703. For instance, she makes no effort to compare the cost of valuing property today and the cost of valuing property as of over three years ago. She also does not explain why valuing the property as of June 2011 would be more difficult than, for example, a valuation as of October 2014.

Comparable sales are what valuations are based upon and there should be no difficulty, or extra cost, associated with obtaining such data for the area where the property is located, as of June 2011. With the advancement of technology, including Internet sites such as zillow.com, the court is not persuaded that it is more difficult or expensive for the creditor to determine the value of the property as of June 22, 2011.

Finally, the debtor valued the real property at $360,000 in Schedule A, subject to a total of $449,308 in unavoidable liens in Schedule D. Docket 1. This means that the creditor is not required to ascertain the value of the property as of the petition date. All the creditor must do is confirm that the property was worth less than $449,308 as of the petition date. The court then is not convinced that the creditor has been prejudiced by the timing of this motion. The motion will be denied.

6.	14-27860-A-7	ROBERT/JULIE KNOX	MOTION TO
	BLG-5		AVOID JUDICIAL LIEN
	VS. STANLEY R. EDELMAN		12-18-14 [61]

Tentative Ruling: The motion will be granted in part.

A judgment was entered against debtor Robert Knox in favor of Stanley Edelman for the sum of $727,673 on August 16, 2000. The judgment was renewed on July 12, 2007 for $1,092,506.30. The abstract of the renewed judgment was recorded with Shasta County on January 6, 2011. That lien attached to the debtor's residential real property in Redding, California.

Cal. Civ. Proc. Code § 683.180(a) provides: "If a judgment lien on an interest in real property has been created pursuant to a money judgment and the judgment is renewed pursuant to this article, the duration of the judgment lien is

extended until 10 years from the date of the filing of the application for renewal if, before the expiration of the judgment lien, a certified copy of the application for renewal is recorded with the county recorder of the county where the real property subject to the judgment lien is located."

While there is no evidence that Mr. Edelman complied with Cal. Civ. Proc. Code § 683.180(a), nothing prevents him from recording a new abstract of judgment solely based on the renewed judgment.

The judgment was originally entered against Mr. Knox on August 16, 2000 and an abstract of judgment was recorded on August 23, 2000. Docket 22, Ex. G. Mr. Edelman applied for a renewal of the judgment on July 12, 2007 and the judgment was renewed on July 12, 2007. Docket 22, Ex. G.

But, the lien based on the August 16, 2000 judgment was extinguished on August 16, 2010 under Cal. Civ. Proc. Code § 683.020(c), which provides that "[e]xcept as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) [a]ny lien created by an enforcement procedure pursuant to the judgment is extinguished."

This leaves the possibility of a lien based only on the renewed July 12, 2007 judgment.

In order for "the duration of the judgment lien [to be] extended until 10 years from the date of the filing of the application for renewal [of the judgment]," before expiration of the judgment lien, a certified copy of the application for renewal of the judgment must have been recorded by Mr. Edelman. Cal. Civ. Proc. Code § 683.180(a). Otherwise, the lien terminates upon expiration of the August 16, 2000 judgment.

Although the court has no evidence that Mr. Edelman recorded the application for renewal of the August 16, 2000 judgment before expiration of the lien based on that judgment, nothing prevents Mr. Edelman to create a lien by recording a separate abstract of judgment based solely on the renewed judgment entered on July 12, 2007. Compliance with Cal. Civ. Proc. Code § 683.180(a) preserves solely the continuity of the judicial lien based on a judgment that is about to expire. Yet, after a judgement is renewed and a renewed judgment is entered, nothing prevents the judgment creditor from recording a new and separate abstract of judgment based solely on the entered renewed judgment.

Thus, in this case, when Mr. Edelman recorded an abstract of the renewed July 12, 2007 judgment on January 6, 2011, he created a judicial lien against the property on that date.

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 $170,000 as of the date of the petition. The unavoidable liens total $0.00 on that same date. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $170,000 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).

Finally, the motion will be denied to the extent it is seeking avoidance of the lien as to personal property. Although the motion generally does not refer to personal property, in the prayer for relief, the motion states: "The declarations and Exhibits, if any, thereto filed herewith clearly demonstrates the following: a. That the judicial lien set forth exist and attach against the Debtors' interest in certain personal property." Docket 61 at 7-8.

The court will deny the motion as to any personal property, given that it does not identify any such property subject to the creditor's judicial lien.

7. 12-27279-A-7 RONIE RONQUILLO — MOTION TO AVOID JUDICIAL LIEN
MET-1
VS. KELKRIS ASSOCIATES, INC. — 12-15-14 [28]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of $23,824.91 on May 5, 2010. The abstract of judgment was recorded with Solano County on June 28, 2010. That lien attached to the debtor's residential real property in Vacaville, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of $220,000. The unavoidable liens total $292,154, consisting of a single mortgage in favor of Wells Fargo Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00.

The motion will be denied because the debtor amended his Schedule C on December 15, 2014, to add an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 26. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien. The motion will be denied.

8. 14-29584-A-7 JULIE KOSTA — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMK-1
PLANET HOME LENDING, L.L.C. VS. — 12-11-14 [14]

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

The movant, Planet Home Lending, L.L.C., seeks relief from the automatic stay as to a real property in Vacaville, California.

With respect to the debtor, the property has a value of $271,711 and it is encumbered by claims totaling approximately $217,668. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is in first priority position and secures a claim of $167,668. This leaves approximately $54,042 of equity in the property.

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

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant also has an equity cushion of approximately $104,043. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after January 5, 2015. The trustee filed a report of no distribution on November 5, 2014 and there is nothing in the file suggesting that the case will remain open a significant period beyond January 5, 2015. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on November 5, 2014.

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

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

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

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

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

9.	14-31285-A-7 CAROLINE BIRK JMH-3 BLUE MOUNTAIN HOMES, L.L.C. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-22-14 [20]

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

The movant, Blue Mountain Homes, L.L.C., seeks relief from the automatic stay under section 362(d)(1), (d)(2), and (d)(4), as to a real property in Weed, California. The movant purchased the property pre-petition, in October 2013, after a foreclosure sale held in June 2011. The movant is seeking relief from stay to complete an unlawful detainer action filed against the debtor on May 12, 2014. Trial in the action was set for September 18, 2014. The debtor filed the instant bankruptcy case on November 17, 2014.

The debtor opposes the motion, arguing that she disputes the foreclosure sale and stating that she is "filing a RICO lawsuit . . . against all parties involved." Docket 24.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On September 18, 2014, the debtor filed a chapter 13 case (case no. 14-29343). But, the court dismissed that case on October 6, 2014 due to the debtor's failure to timely file her bankruptcy schedules and statements. The debtor filed the instant case on November 17, 2014. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the

automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on December 17, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on December 17, 2014, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

Finally, relief under section 362(d)(4) will be denied. 11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

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

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

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is not "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant is the owner of the property and the debtor claims to be the owner of the property. The movant purchased the property from a party that purchased the property at a foreclosure sale. The movant then is not owed a debt secured by the property. As such, it is not entitled to invoke section 362(d)(4). See Ellis v. Yu (In re Ellis), ___ B.R. ___ (B.A.P. 9th Cir. Nov. 19, 2014).

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

10. 14-28786-A-7 UMASH/SUNITA PRASAD — MOTION TO AVOID JUDICIAL LIEN
JKU-1
VS. CITIBANK, N.A. — 12-8-14 [20]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Umash Prasad in favor of Citibank for the sum of $5,664.16 on November 7, 2012. The abstract of judgment was recorded with Sacramento County on July 23, 2013. That lien attached to the debtor's residential real property in Elk Grove, California. The debtor is asking the court to avoid the lien.

According to Schedule A, the subject real property has an approximate value of $393,067. The unavoidable liens total $254,710, consisting of a single mortgage in favor of Seterus in the amount of $254,000 and an HOA lien in favor of Stonelake Master Association in the amount of $710. The debtor claims an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.

However, the motion makes no effort to establish that the debtor is entitled to a $175,000 exemption claim under Cal. Civ. Proc. Code § 704.730. The sole supporting declaration states: "We have claimed an exemption on the Lien Property in the amount of $175,000.00." Docket 22 at 2.

The debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

11. 14-29986-A-7 ELIZABETH CHAN — MOTION TO AVOID JUDICIAL LIEN
MET-1
VS. CACH, L.L.C.
12-7-14 [13]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Cach, L.L.C. for the sum of $7,003.86 on December 24, 2012. The abstract of judgment was recorded with Solano County on August 20, 2013. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of $350,000. The unavoidable liens total $445,154 consisting of a single mortgage in favor of Bank of America Home Loans in the amount of $443,567 and an HOA lien in favor of Turnstone Homeowners Association in the amount of $1,587. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Docket 12.

The motion will be denied because the debtor amended Schedule C on November 21, 2014, to exempt the subject property. However, she did not serve the Amended Schedule C on any of the creditors or the trustee. Docket 12. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien. The motion will be denied.

12. 14-29986-A-7 ELIZABETH CHAN — MOTION TO AVOID JUDICIAL LIEN
MET-2
VS. AMERICAN EXPRESS CENTURION BANK
12-7-14 [19]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Matthew Mayette in favor of American Express Centurion Bank for the sum of $24,244.19 on March 8, 2011. The abstract of judgment was recorded with Solano County on May 30, 2012. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of $350,000. The

unavoidable liens total $445,154 consisting of a single mortgage in favor of Bank of America Home Loans in the amount of $443,567 and an HOA lien in favor of Turnstone Homeowners Association in the amount of $1,587. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00. Docket 12.

The motion will be denied for three reasons. First, service on the respondent creditor violates Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Managing or General Agent Or Agent for service of process." Docket 24 at 1. This does not satisfy Rule 7004(h).

Second, the motion will be denied also because the debtor amended her Schedule C on November 21, 2014, to add an exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 12. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien.

Finally, the motion will be denied also because the judgment giving rise to the judicial lien against the property was entered against the debtor's former spouse and not against the debtor. The court cannot tell whether the debt giving rise to the judgment was separate or community debt, when that debt was incurred relative to the parties' divorce and this bankruptcy proceeding, and whether that debt is dischargeable in this bankruptcy proceeding. Although the debtor's former spouse quitclaimed the subject property to the debtor as part of a marital property settlement agreement, the court does not know when this took place and it is not persuaded that the debtor should be entitled to avoid a lien arising from a judgment entered against someone other than the debtor.

13. 12-36987-A-7 LAWRENCE/LINDA HANSEN — MOTION TO SELL
JRR-3 — 12-9-14 [58]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and without warranties for $365,000 in cash the estate's interest in a real property in Rocklin, California, to Robert and Salley Bruce. The trustee will receive a buyer's premium of $21,500 as part of the sale.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of a 6% real estate commission.

The first mortgage holder, JPMorgan Chase Bank, has agreed to accept $329,758.88 in full satisfaction of its claim. The second mortgage holder, Newport Beach Holdings, L.L.C., has agreed to accept $8,500 in full satisfaction of its claim. These claims, in addition to outstanding real property taxes, outstanding utilities, the buyer's premium and the real estate commission, will be paid from escrow.

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

than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The estate will receive $21,500 from the sale. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission.

14. 14-30888-A-7 ALEXANDRE MACK — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDW-1
CAM VII TRUST VS. — 12-18-14 [32]

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

The movant, CAM VII Trust, seeks both prospective and retroactive relief from the automatic stay under section 362(d)(1), (d)(2) and (d)(4), as to a real property in Richmond, California.

The movant is the first deed holder on the property and, although it has been attempting to foreclose on the property, it has been unable to do so because the original borrower on the loan secured by the property, Consuelo Garcia, has been transferring fractional interests in the property to various individuals who have been filing bankruptcy cases.

This is the third bankruptcy case involving the property. The first two cases, both filed in the United States Bankruptcy Court for the Central District of California, involved Jose Morfin (Case No. 14-25356) and Caresse Hernandez (Case No. 14-28480). The movant obtained an in rem order under section 362(d)(4) in the Caresse Hernandez case. That order was entered on December 9, 2014 and it was recorded on December 11, 2014. Docket 37 at 35; Docket 36 at 4.

This bankruptcy case was filed on November 3, 2014 as a chapter 13 proceeding. The case was converted to chapter 7 on November 26, 2014.

The movant is seeking retroactive relief from stay to validate the recordation of the order. It is also seeking in rem relief under section 362(d)(4) in this case. And, the movant is seeking prospective relief from stay, asserting bad faith and lack of payment on the loan secured by the property.

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

The court will deny nunc pro tunc relief from stay to validate the recording of the in rem order the movant obtained in the Caresse Hernandez case because the movant admittedly knew of this case prior to the recordation of the in rem order on December 11, 2014. The movant's memorandum of points and authorities in support of the motion states: "On the afternoon of November 24, 2014, [the movant] was notified by the foreclosure trustee of another supposed transfer of the Property to a party in bankruptcy, ALEXANDRE DO MACK." Docket 36 at 4. Hence, the movant recorded the in rem order even though it knew of this

bankruptcy case.

In addition, the movant will not be prejudiced by the court's denial of nunc pro tunc relief. The debtor in the instant case does not claim that she owns the property. The property has not been listed in the debtor's schedules and statements. Also, the in rem order does not implicate this case. It is "binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this order by the court." Docket 37 at 36. The in rem order was entered on December 9, 2014, whereas this case was filed on November 3, 2014.

Second, the court will grant relief under section 362(d)(4), which states that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

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

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

The original borrower on the loan secured by the property, Consuelo Garcia, transferred a fractional one-eight interest in the property to the debtor on July 13, 2014. Docket 41 at 13. The debtor did not file this case until November 3, 2014.

From this, the court infers that the debtor knew of the property transfer before filing this case. The instant filing then was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of the property. 11 U.S.C. § 362(d)(4)(A).

But, even if the debtor did not know of the property transfer before filing this case, the court still concludes that the instant filing was part of a scheme to delay, hinder, or defraud creditors. Nothing in section 362(d)(4) requires that the debtor be aware of the property transfer at the time of filing or that the debtor is part of the scheme. As long as the instant filing furthers the purposes of the scheme, based on a prior transfer of the property, with or without knowledge of the debtor, the filing becomes part of that scheme. Accordingly, the court will grant section 362(d)(4) relief.

Finally, the court will grant prospective relief from stay. The fact that the debtor is not claiming ownership interest in the subject property is cause for the granting of relief from stay under section 362(d)(1). The court finds it unnecessary to address other basis for prospective stay relief under section 362(d)(1).

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

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed

of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the 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 court has no admissible evidence from the movant establishing that it is an over-secured creditor. The reference to a $170,000 "appraisal/broker price opinion report" valuation of the property "in the movant's file" is inadmissible. That "appraisal/broker price opinion report" is not part of the record on the motion and any reference to it is inadmissible hearsay. Fed. R. Evid. 802; Docket 34 at 6.

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.

15. 14-25089-A-7 ANGIE ROERSMA — MOTION TO AVOID JUDICIAL LIEN
DEF-1
VS. AMERICAN EXPRESS CENTURION BANK — 11-6-14 [17]

Tentative Ruling: This motion will be denied as moot. The court already granted another motion - identical to this one - on December 1, 2014. Docket 37. The debtor has not yet submitted an order on the ruling granting the other motion.

16. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
U.S. BANK, N.A. VS. — 12-1-14 [172]

Tentative Ruling: The motion will be denied.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Fair Oaks, California.

The trustee has filed a response, pointing out that the property is not part of this bankruptcy estate. The court agrees with the trustee and will deny the motion.

To establish standing, a plaintiff must meet both constitutional and prudential requirements. Under the case or controversy requirements of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact element;" (2) the injury must be fairly traceable to the challenged action, known as the "causation element;" and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984).

The movant cannot satisfy the injury in fact element of the case or controversy requirements of Article III of the United States Constitution because the

automatic stay in this case never affected the property.

The property was not property of the debtors on the petition date. See 11 U.S.C. § 541(a)(1) (defining that the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case).

In their Amended Schedule A, filed on February 7, 2013, the debtors indicate that the property was transferred to their L.L.C. entity. Docket 14 at 3. The statement of financial affairs (item 10) concurs. The property was transferred to 1st Compassionate Care Homes L.L.C. in January 2013, immediately before this case was filed on January 23, 2013. Docket 14 at 21; Docket 18 at 8. As such, the automatic stay in this case never took effect as to the property. Also, as mentioned by the trustee, the property transfer has not been avoided.

And, the court is not prepared to adjudicate this motion in an advisory fashion.

"'[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. at 96 ... (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97...."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001). The motion will be denied.

THE FINAL RULINGS BEGIN HERE

17. 14-30807-A-7 JOSE GONZALEZ AND VIRNA MAGANA — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 12-9-14 [12]
SANTANDER CONSUMER USA, 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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2014 Dodge RAM. The movant has produced evidence that the vehicle has a value of $27,700 ($30,000 in Schedule B) and its secured claim is approximately $31,666. Docket 14 at 3.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on December 3, 2014. And, the movant has possession of the vehicle already.

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

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

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

18. 13-30311-A-7 KATHERINE GERRARD — MOTION TO AVOID JUDICIAL LIEN
VS. CACH, L.L.C., UNIFUND, CCR, L.L.C., AND AMERICAN EXPRESS BANK, F.S.B. — 12-6-14 [104]

Final Ruling: The motion will be dismissed without prejudice for several reasons.

First, while the motion was filed and served pursuant to Local Bankruptcy Rule 9014-1(f)(1) - more than 28 days prior to the hearing on the motion, the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written

oppositions must be filed. See Docket 105. Under Local Bankruptcy Rule 9014-1(f)(1), written opposition must filed and served at least 14 days' prior to the hearing on the motion.

Second, while the motion is seeking the avoidance of two judicial liens held by Cach, L.L.C., one judicial lien held by Unifund, CCR, L.L.C., and one judicial lien held by American Express Bank, these respondents have not been served or properly served with the motion papers. Cach, L.L.C. has not been served with the motion. See Docket 107. Although First Equity Cach, L.L.C. was served with the motion, this is not the same entity as Cach, L.L.C.

Even if First Equity Cach, L.L.C. were the correct entity, it has not been served in accordance 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 First Equity Cach, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 107 at 3.

Unifund, CCR, L.L.C. has not been served either. See Docket 107.

The service on American Express Bank violates Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution. The notice on American Express Bank was not addressed solely to an officer of the creditor. It was not addressed to anyone. Docket 107 at 3. This violates Rule 7004(h).

Third, even if the motion were properly noticed, served, and the notice of hearing correctly stated whether and when written opposition must be filed, the evidence in support of the motion is inadmissible. The motion and supporting declaration refer to four judicial liens created by the recordation of abstracts of judgments with the Solano County Clerk Recorder's Office. Yet, the recorded abstracts of judgment are not part of the record for the motion.

Hence, the references to the judicial liens are inadmissible hearsay. See Fed. R. Evid. 802.

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. The court should not have to speculate about which papers filed by the movant are associated with the subject motion.

19. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION FOR EXAMINATION
FWP-1 9-22-14 [114]

Final Ruling: The moving party has voluntarily dismissed this motion. Docket 156.

20. 13-30328-A-7 MARY LEE/GREGORY KNECHT
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-10-14 [36]

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 dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a 2004 Mercedes-Benz E-500.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On September 7, 2012, the debtors filed a chapter 13 case (case no. 12-36262). But, the court dismissed that case on March 24, 2013 due to the debtors' failure to timely obtain plan confirmation. The debtors filed the instant case as a chapter 13 proceeding on August 5, 2013. This case was converted to chapter 7 on November 24, 2014. Docket 25. The prior case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on September 4, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on September 4, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

21. 11-35532-A-7 WILLIAM ROBERTS — MOTION TO AVOID JUDICIAL LIEN
FWK-1
VS. AMERICAN GENERAL FIN'L SVCS., INC. — 12-2-14 [20]

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 American General Financial Services, 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."

Further, Docket 24, which supposedly contains the exhibits to the motion, is devoid of any attachments. In addition, the motion itself appears to be missing some pages, or the pages are out of order. Docket 20.

22. 14-24839-A-7 KENNETH/ALICIA UNG — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1
NATIONSTAR MORTGAGE, L.L.C. VS. — 12-11-14 [47]

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

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

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Buckeye, Arizona.

Given the entry of the debtor's discharge on September 15, 2014, 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 $175,000 and it is encumbered by claims totaling approximately $179,016. The movant's deed is the only encumbrance against the property.

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

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to

obtain possession of the subject property following sale. No other relief is awarded.

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.

23. 14-28457-A-7 JASON MENDENHALL — MOTION TO AVOID JUDICIAL LIEN
DLM-3
VS. THE GOLDEN 1 CREDIT UNION — 12-8-14 [28]

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

The motion will be granted.

A judgment was entered against the debtor in favor of The Golden 1 Credit Union for the sum of $14,986.31 on January 13, 2014. The abstract of judgment was recorded with Sacramento County on April 11, 2014. That lien attached to the debtor's one-third interest in a residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has an approximate value of $230,000. The unavoidable liens total $156,679.97, consisting of a single mortgage held by Guild Mortgage Company. This leaves only $73,320.03 of equity in the property. The debtor's one-third interest in this equity amounts to $24,440.01. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $75,000.

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).

24. 14-31961-A-7 VITALI RUDENCO — AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
MICHAEL ROMANISHIN VS. — 12-30-14 [18]

Final Ruling: The motion will be dismissed without prejudice because it was set on less than 14 days' notice, as required by Local Bankruptcy Rule 9014-1(f)(1)-(3) and the movant has not obtained an order shortening the time for notice of the motion. The motion was filed and served on December 30, 2014, only 13 days prior to the January 12, 2015 hearing on the motion. Dockets 18 &

20.

Further, the notice of hearing for the motion requires written opposition to be filed and served at least 14 days prior to the hearing on the motion, available only if the motion were brought under Local Bankruptcy Rule 9014-1(f)(1). Docket 19.

However, the motion could not have been brought under Local Bankruptcy Rule 9014-1(f)(1) because that rule requires the motion to be filed and served at least 28 days prior to the hearing.

Finally, the motion is devoid of evidence establishing the factual assertions in the motion, in violation of Local Bankruptcy Rule 9014-1(d)(6).

25. 14-25962-A-7 KAREN CONYERS — MOTION TO REDEEM
SDB-2 — 10-7-14 [29]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The hearing on this motion was continued from December 1, 2014. An amended ruling from December 1 follows below.

The debtor wishes to redeem a 2013 Dodge Dart in good condition with 10,000 miles, for $12,387. The vehicle is subject to a claim held by General Motors Financial Company, Inc., for approximately $18,403.31.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended primarily for personal, family or household use, from a lien securing a dischargeable consumer debt if the property was exempted under § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The property must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The debtor has produced evidence that the vehicle is primarily used for personal, family and household purposes. She has produced evidence that the vehicle has a retail value of approximately $12,384. Dockets 39 & 40. The vehicle has been claimed as exempt in the debtor's Amended Schedule C in the amount of $2,900. Docket 43.

Given the above, the value of the creditor's secured claim is $12,387.

The motion will be granted. The sum of $12,387 shall be tendered to the creditor within 30 days of entry of the order on this motion.

26. 12-41763-A-7 ANTHONY/SANDY GRECO — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
SMD-2 — 12-9-14 [100]

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

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $6,451.50 in fees and $210.37 in expenses, for a total of $6,661.87. This motion covers the period from August 8, 2014 through December 1, 2014. The court approved the movant's employment as the estate's accountant on August 13, 2014. In performing its services, the movant charged an hourly rate of $345.

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 analyzing tax consequences from the sale of various estate assets, preparing declaration pertaining to the estate's tax liabilities, preparing estate tax returns and preparing and filing the instant compensation motion.

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

27. 14-28669-A-7 JIMMIE BEECHLER — MOTION TO AVOID JUDICIAL LIEN
JRR-1 — 12-3-14 [12]
VS. FRED AND GAIL HOGAN

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

The motion will be granted.

A judgment was entered against the debtor in favor of Fred Hogan and Gail Hogan for the sum of $6,000.00 on May 29, 2014. The abstract of judgment was recorded with El Dorado County on July 1, 2014. That lien attached to the debtor's residential real property in Greenwood, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has an approximate value of $264,000. The unavoidable liens total $144,320.54 on that same date, consisting of a single mortgage in favor of Reverse Mortgage Solutions, Inc. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000.

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).

28. 14-29479-A-7 PAMELA LANGAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 — 12-9-14 [14]
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 Galt, California. The property has a value of $204,744 and it is encumbered by claims totaling approximately $284,072. 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 October 16, 2014.

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.

29. 13-32288-A-7 RANDALL ACKERMAN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
JES-2 — 11-7-14 [54]

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.

James Salven, accountant for the estate, has filed his first and final application for approval of compensation. The requested compensation consists of $1,600 in fees (reduced from $2,295) and $217.77 in expenses, for a total of $1,817.77. This motion covers the period from June 4, 2014 through December 15, 2014. The court approved the movant's employment as the estate's accountant on June 16, 2014. In performing its services, the movant charged an hourly rate of $225.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included advising the trustee about tax consequences and preparing estate tax returns.

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

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

30. 13-32288-A-7 RANDALL ACKERMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 12-12-14 [55]
JPMORGAN CHASE BANK, N.A. VS.

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

The motion will be dismissed as moot.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay with respect to a 2009 Ford Focus vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on September 19, 2013 and a meeting of creditors was first convened on October 29, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 19. The debtor filed a statement of intention on the petition date, indicating an intent to redeem the vehicle.

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

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to redeem the vehicle, the debtor did not do so timely. And, no reaffirmation agreement has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 28, 2013, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on November 28, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case

does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.