UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 29, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 1, 4, 6, 8, 9

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. 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 FEBRUARY 12, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 29, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 5, 2018. 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. 17-26321-A-7 TAMELA GOSPEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
CPA-5 — 1-10-18 [17]
FAIRFIELD SHEFFIELD GREENS, L.L.C. VS.

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

The motion will be granted.

The movant, Fairfield Sheffield Greens LLC, seeks retroactive relief from stay with respect to the real property located at 2780 North Texas Street, in Fairfield, California and to proceed against debtor in an unlawful detainer proceeding. The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in December 2017. On December 6, 2017, the movant served the debtor with a three-day notice to quit. After expiration of the notice, the movant commenced an unlawful detainer proceeding on December 26, 2017. The movant was unaware of the debtor's bankruptcy filing on September 22, 2017.

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

The movant did not know about the bankruptcy filing when it served the debtor with a three-day notice to quit and subsequently filed an unlawful detainer action against the debtor. Had the movant applied for relief from stay before these actions, the court would have likely granted it.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, the debtor has defaulted under the lease agreement by failing to pay the rent due from December 2017 onward. 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).

Given the entry of debtor's discharge on January 8, 2018, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the court will grant retroactive relief for the time period from December 6, 2017 to January 8, 2018 so as not to void the three-day notice to quit and unlawful detainer complaint. The movant may proceed with

its unlawful detainer action in state court and exercise its state law remedies in accordance with the orders and judgments of the state court without seeking further relief as the automatic stay has terminated as to the debtor.

No fees and costs are awarded because 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 waived.

2. 17-28324-A-7 MORTIMER/ARLENE JARVIS — MOTION TO AVOID JUDICIAL LIEN
DL-1
VS. INDEMNITY COMPANY OF CALIFORNIA — 1-3-18 [10]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Indemnity Company of California for the sum of $1,231,604 on an unidentified date. The abstract of judgment was supposedly recorded with Nevada County on an unidentified date. That lien attached to the debtors' interest in a residential real property in Yuba City, California. The debtors request avoidance of the lien under 11 U.S.C. § 522(f)(1).

The motion will be denied for several reasons.

First, the court cannot tell whether service complies 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 debtors served the motion on ICC 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." See Dockets 13 & 14.

Although the motion was served on Amtrust Surety as an agent for service of process, it is not clear that Amtrust is an agent for ICC. The proof of service does not say for whom is Amtrust an agent. Docket 13. Also, in the California Secretary of State's records, the agent for service of process for ICC is CSC Lawyers Incorporating Service, not Amtrust.

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

Second, the motion does not contain admissible evidence of the judgment, judicial lien, and how the lien was created. The motion and supporting declaration merely refer to the $1,231,604 judgment in favor of ICC, without attaching the actual judgment. Such reference, then, is inadmissible hearsay. Fed. R. Evid. 801(c) & 802. Nor is there reference or evidence of when the judgment was entered and when and where an abstract of the judgment was recorded. This is essential to establish the existence and nature of the alleged ICC lien.

Third, the motion asserts that the debtors are entitled to an exemption

pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000.

The debtor must establish entitlement to the exemption claim even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 12.

Finally, the motion refers to a lien in favor of the California Employment and Development Department. Yet, the motion does not establish whether that lien is indeed avoidable. Dockets 10 & 12. If a statutory lien, it would not be avoidable. If a judicial lien, however, it would be avoidable, resulting in a drastically different lien avoidance analysis.

3. 17-28324-A-7 MORTIMER/ARLENE JARVIS — MOTION TO COMPEL ABANDONMENT
DL-2 — 1-3-18 [15]

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 continued.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property on Marcia Avenue in Yuba City, California. The property is over-encumbered for purposes of computing a benefit to the estate.

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

The debtors have produced evidence that the value of the property is $375,000. Docket 17. The property is encumbered by: a first deed of trust in favor of Wells Fargo Bank in the amount of $70,360, a lien in favor of Indemnity Company of California for $1,231,604, and a lien in favor of the California Employment and Development Department for $138,346. In addition, the debtors have claimed an exemption of $175,000 under Cal. Civ. Proc. Code § 704.730(a)(3) in the property.

The trustee's opposition states that, as of the time of its filing, the trustee has not conducted the initial 341 meeting of creditors, which is scheduled for January 23, 2018. Accordingly, the trustee will need additional time beyond January 29, 2018 to evaluate this case and possible assets, including the subject property. The trustee requests a 30 day continuance to allow the trustee to obtain additional information and evaluate this asset before it is abandoned.

Given the trustee's need for additional time to investigate the debtors' assets prior to any abandonment, the hearing will be continued to February 26, 2018 at 10:00 a.m.

4.	17-27126-A-7 VVF-1 AMERICAN HONDA	ABHINESH KUMAR AND ROSHNI DEVI FINANCE CORP. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-5-18 [14]

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 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 dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2012 Honda Civic 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 October 30, 2017 and a meeting of creditors was first convened on December 19, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 29, 2017. The debtor filed a statement of intention on the petition date, but did not list the vehicle in it.

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 filed a statement of intention on the petition date, the debtor did not list the vehicle in it. The debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed,

nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 29, 2017, 30 days after the petition date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on December 20, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 29, 2017.

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.

5.	16-25749-A-7	ROBERT GARZA AND MARIA	MOTION FOR
	PPR-1	HERRERA	RELIEF FROM AUTOMATIC STAY
	CARRINGTON	MORTGAGE SERVICES, L.L.C. VS.	6-27-17 [45]

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

The movant, Carrington Mortgage Services, seeks relief from the automatic stay as to real property in Dixon, California.

Given the entry of the debtor's discharge on April 28, 2017, 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 $220,000 and it is encumbered by claims totaling approximately $130,928 (excluding unapproved attorney's fees and costs for this motion), consisting solely of the movant's claim. See Docket 50. Neither costs of sale, nor the debtors' exemption claim are encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). Id. The movant's deed is the only encumbrance against the property. This leaves approximately $89,072 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. See Docket 47. 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 has an equity cushion of approximately $89,072. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee evaluates the property for administration. See Docket 52 (the trustee requesting time to determine administration options for the property). Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

6. 17-25455-A-7 DOROTHY HOLMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
BDA-1
CAPITAL ONE AUTO FINANCE VS. — 1-9-18 [18]

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

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

Movant Capital One Auto Finance seeks relief from the automatic stay with respect to a 2013 Chevrolet Impala. Given the entry of debtor's discharge on December 4, 2017, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to debtor.

As to the trustee, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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 statement of nonopposition on January 15, 2017. Based on this, the court finds cause for the granting of relief from stay. In addition, the vehicle has a value of $8,510 and its secured claim is approximately $12,256. Hence, the court finds that there is no realizable equity in the vehicle, it is not necessary to a reorganization, and there is no likelihood the trustee can

administer the vehicle for the benefit of creditors.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that movant's vehicle is being used by debtor without compensation and is depreciating in value.

Because movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

7.	17-27977-A-7 DS-1 DIANE SUN VS.	ALBERT VILLELA	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-27-17 [20]

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

The movant, Diane Sun, seeks relief from the automatic stay as to a pending unlawful detainer action in state court against the debtor, with respect to a real property in Tracy, California. The movant also asks for retroactive relief from stay, with respect to post-petition actions taken by the movant.

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 August 30, 2017, the debtor filed a chapter 7 case (Case no. 17-25763). But, the court dismissed that case on November 29, 2017 due to the debtor's failure to appear at the meeting of creditors. The debtor filed the instant case on December 7, 2017. 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, as to the request for prospective stay relief, 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 January 6, 2018, 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 with respect to the subject property on January 6, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

The request for retroactive relief from stay will be denied. 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,
- when the creditor first learned of the subject 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 motion however does not identify any actions taken by the movant post-petition — after December 7, 2017, when this case was filed — and does not disclose when the movant first learned of this bankruptcy filing. The court is not certain why retroactive relief is needed.

The movant filed the unlawful detainer action in July 2017, with some hearing or trial having been set in the action for September 1, 2017. The debtor filed his prior bankruptcy case on August 30. The case was dismissed on November 29. The court cannot examine in this case whether retroactive relief is warranted between August 30 and November 29 because this case was not filed until December 7. The relevant period of post-petition actions in this case is after December 7. Yet, the motion does not state or clearly state any actions taken by the movant after December 7 in violation of the stay. Nor does the motion state when the movant learned of this case, relative to its filing. Accordingly, the request for retroactive relief will be denied.

8. 12-35783-A-7 CHARLES/MARY MULLEN — MOTION TO AVOID JUDICIAL LIEN
RPH-2
VS. DISCOVER BANK — 1-15-18 [28]

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 Discover Bank for the sum of $16,175.80 on June 28, 2010. The abstract of judgment was recorded with El Dorado County on July 15, 2010. That lien attached to the debtor's interest in a residential real property in South Lake Tahoe, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $175,000 as of the petition date. Docket 1. The unavoidable liens totaled $69,700 on that same date, consisting of a single mortgage in favor of Chase. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $105,300 in Schedule C. Docket 1.

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).

9. 17-27392-A-7 PAUL/NANCY KLISIEWICZ — MOTION TO COMPEL ABANDONMENT
MBS-1 — 12-5-17 [11]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from January 2, in order for the trustee to complete his evaluation of the subject property. The trustee no longer opposes the motion.

The debtors seek an order compelling the trustee to abandon the estate's interest in their property located at 4107 Hackberry Place, Davis, California. Most of the equity in the property is encumbered by consensual liens, and the debtors wish to sell the property for $850,000.

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

The debtors have scheduled the value of the property at $850,000. The property is encumbered by a first deed of trust in favor of Bayview Loan Servicing in the amount of $612,817 and a second mortgage in favor of SLS in the amount of $170,909, for a total of $783,726. The debtors have listed an exemption in the property in the amount of $0 pursuant to Cal. Code Civ. Proc. § 704.140(b)(1).

Given the prior continuance of the hearing on this motion for the trustee to complete his evaluation of the property, given the trustee's non-opposition and no asset report, given anticipated approximately $68,000 in sales costs ($850,000 x 8%), the court concludes that the property is of inconsequential value to the estate. The motion will be granted and the property will be abandoned.

FINAL RULINGS BEGIN HERE

10. 17-26616-A-7 RAYVELLA GEORGE — MOTION FOR
RAS-1 — RELIEF FROM AUTOMATIC STAY
CHAMPION MORTGAGE COMPANY VS. — 12-21-17 [26]

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, Champion Mortgage Co., seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on January 11, 2018, 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 $354,000 and it is encumbered by claims totaling approximately $358,710. 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 3, 2017.

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.

11. 10-27435-A-7 THOMAS GASSNER — OBJECTION TO EXEMPTIONS
DNL-5 — 3-31-17 [90]

Final Ruling: The objection will be continued to an available date in May, 2018, per stipulation of the parties and order of the court. Dockets 131 & 132. The parties are to select the date and file a notice of continued hearing together with a certificate of service.

12. 17-26457-A-7 ROBERT/CHRISTINA HERNANDEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 12-29-17 [23]
CASTLE AND COOKE MORTGAGE, L.L.C. 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, Castle & Cooke Mortgage, L.L.C., seeks relief from the automatic stay as to a real property in El Paso, Texas. The property has a value of $135,000 and it is encumbered by claims totaling approximately $163,119. 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 8, 2017. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

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

13. 17-28262-A-7 JEANNETTE DAVIS — ORDER TO SHOW CAUSE 1-4-18 [14]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a). However, on January 9, the court granted a waiver of the filing fee. Docket 18.