UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 28, 2016 at 10:00 a.m.

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

3, 4, 6, 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 APRIL 25, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 11, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 18, 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. 15-28303-A-7 MERLE BASS — MOTION FOR DENIAL OF DISCHARGE OF DEBTOR
UST-1 — 2-18-16 [23]

Tentative Ruling: The motion will be granted.

The U.S. Trustee moves for denial of the debtor's discharge pursuant to 11 U.S.C. § 727(a)(8), which provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

The debtor opposes the motion, asking that his discharge not be denied, as he cannot afford anything beyond his basic living expenses. He does not dispute, however, that he received a prior chapter 7 discharge in a case filed within eight years of this case.

An objection to discharge pursuant to section 727(a)(8) does not require an adversary proceeding. See Fed. R. Bankr. P. 7001(4).

The debtor filed a chapter 7 case, Case No. 09-22349-A-7, on February 12, 2009 and received a discharge in that case on May 22, 2009. The debtor filed the subject bankruptcy case, Case No. 15-28303-A-7, on October 26, 2015, approximately six years and eight months after the filing of Case No. 09-22349-A-7. Docket 26. As the debtor filed the instant bankruptcy case less than eight years after the filing of the bankruptcy case in which he received a discharge, he is not eligible to receive a discharge in the instant bankruptcy case. Accordingly, the motion will be granted.

While the court sympathizes with the debtor's financial situation, the court has no discretion grant a discharge given the limitations of section 727(a)(8). The statute is unequivocal that no chapter 7 discharge may be granted when the debtor obtained a prior chapter 7 discharge in a case filed within the prior eight years.

2. 15-24111-A-7 PAMELA GUTTIERREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 3-11-16 [40]
JPMORGAN CHASE BANK, N.A. VS.

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

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Red Bluff, California.

With respect to the debtor, the property has a value of $206,169 and it is encumbered by claims totaling approximately $184,410. The movant's deed is the only encumbrance against the property. This leaves approximately $21,758 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 has an equity cushion of approximately $21,758. 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 March 21, 2016. The trustee filed a report of no distribution on January 20, 2016 and there is nothing in the file suggesting that the case will remain open a significant period beyond March 21, 2016. 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 January 20, 2016. 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.

No fees and costs are awarded. The court concludes that it was unreasonable to file this motion given the impending discharge and closure of the case. The automatic stay is about to expire without any action by the creditor. See 11 U.S.C. § 362(c)(1) & (c)(2). If anything, the pendency of this motion has prolonged the case.

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.

3.	15-20912-A-7 DAVID ROOT	MOTION TO
	MAC-7	AVOID JUDICIAL LIEN
	VS. CACH, L.L.C.	3-14-16 [77]

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 CACH, L.L.C. for the sum of $36,221.25 on August 9, 2012. The abstract of judgment was recorded with Sacramento County on October 5, 2012. That lien attached to the debtor's residential real property in Carmichael, 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 $300,000 as of the petition date. Dockets 79 & 80. The unavoidable liens totaled $341,210,81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. Dockets 79 & 80. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 42.

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).

4. 15-20912-A-7 DAVID ROOT — MOTION TO AVOID JUDICIAL LIEN
MAC-8
VS. PSS WORLD MEDICAL, INC. — 3-14-16 [82]

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 PSS World Medical, Inc. for the sum of $9,267 on August 30, 2010. The abstract of judgment was recorded with Sacramento County on September 28, 2010. That lien attached to the debtor's residential real property in Carmichael, 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 $300,000 as of the petition date. Dockets 84 & 85. The unavoidable liens totaled $341,210,81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. Dockets 84 & 85. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Docket 42.

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).

5. 14-29519-A-7 CHARLES BORNCAMP — MOTION TO AVOID JUDICIAL LIEN
RM-4 — 2-10-16 [46]
VS. UNIFUND CCR, L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Unifund CCR, L.L.C. for the sum of $10,927.42 on November 25, 2013. The abstract of judgment was recorded with San Joaquin County on January 13, 2014. That lien attached to the debtor's residential real property in Tracy, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of $340,000 as of the petition date. Docket 46. The unavoidable liens totaled $276,000 on that same date, consisting of a first mortgage in favor of M&T Bank in the amount of $228,000 and a second mortgage in favor of Bank of America in the amount of $48,000. Dockets 46 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3)(A) in the amount of $175,000 in Schedule C. Dockets 46 & 1.

However, the motion will be denied because it contains no evidence establishing the debtor's entitlement to an exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3)(A). The debtor must establish entitlement to the exemption 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). See Docket 46.

6. 12-38024-A-7 MOHAMMED/LINNA AHRARI — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
PA-8 — 3-7-16 [162]

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

The motion will be granted.

Pino & Associates, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $50,000 in fees (reduced from $53,237.50) and $5,179.72 in expenses, for a

total of $55,179.72. This motion covers the period from July 5, 2013 through March 7, 2016. The court approved the movant's employment as the trustee's attorney on August 6, 2013. In performing its services, the movant charged hourly rates of $125, $250 and $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) communicating with the trustee and U.S. Trustee about various issues, (3) assisting the estate with investigation of the debtors' assets, (4) engaging in extensive responses to the debtors' two motions for conversion of their case to chapter 13, (5) conducting extensive discovery in connection with the two motions, (6) communicating with relatives and creditors of the debtors about the concealment of assets and other issues subject to investigation, (7) preparing and prosecuting a complaint for revocation of the debtors' discharge, also seeking declaratory relief and the turnover of property, (8) negotiating a global settlement agreement with the debtors, (9) preparing and prosecuting a motion for approval of the settlement, (10) responding to an opposition to the compromise motion by the relative-creditors, (11) communicating with their counsel, (12) preparing a reply to the opposition, (13) attending various court hearings, including the hearing on the compromise motion, (14) communicating with a creditor about voluntary withdrawal of a duplicative proof of claim, and (15) preparing and filing employment and compensation motions.

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

7. 15-27439-A-7 TERRANCE FLOURNOY — MOTION TO AVOID JUDICIAL LIEN
DLM-2
VS. PATELCO CREDIT UNION — 2-24-16 [22]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Patelco Credit Union for the sum of $14,383.63 on July 31, 2014. The abstract of judgment was recorded with Sacramento County on August 20, 2014. That lien attached to the debtor's residential real property in North Highlands, California. The debtor seeks avoidance of the lien.

The motion will be denied as the evidence in support of the property's value is inadmissible. The debtor asserts that the property had a value of $185,000 as of the petition date "based on consultations with realtors . . . [and] visit[s] [of] several internet web sites for real estate comparable values in the same area." Docket 24 at 2.

What realtors and websites say about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from any realtors about the value of the property. The court also has no declaration from anyone working at the websites pursuant to which the debtor formulated his opinion of value, much less a declaration qualifying such unidentified websites as experts and establishing the methodology by which they determine the value of property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual

Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible.

Further, 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, a managing or general agent, or other agent authorized by appointment or law to receive service of process." Docket 27. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

8. 09-20140-A-7 BLL-33 — SHASTA REGIONAL MEDICAL CENTER, L.L.C. — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 2-29-16 [796]

Tentative Ruling: The motion will be granted in part.

Byron Lynch and Michael Dacquisto, co-counsel for the trustee, have filed their fifth and final motion for approval of compensation. The requested compensation consists of $15,226.78 in fees (one-third of $45,680.34 recovered for the estate) and $4,175.08 in expenses ($1,018.93 incurred by Mr. Lynch plus $3,156.15 incurred by Mr. Dacquisto), for a total of $19,401.86, for services rendered from September 30, 2011 through the present.

The movants request the court to approve fees and costs to Mr. Lynch totaling $11,170.12 ($10,151.19 in fees and $1,018.93 in costs) and fees and costs to Mr. Dacquisto totaling $8,231.74 ($5,075.59 in fees and $3,156.15 in costs).

The requested compensation is based on a one-third contingency fee agreement. From September 30, 2011 through the present, the trustee has collected $45,680.34.

The court approved the movants' employment as the trustee's attorneys on June 16, 2009. Docket 157.

The movants also seek approval of all fees and expenses on final basis. This includes, in addition to the subject fees and expenses, $820,567.32 in prior interim fees and $15,597.07 in prior interim expenses.

The movants have rendered actual services to the estate from February 4, 2009 through the present, totaling approximately 1,448.2 hours (938.2 hours by Mr. Lynch and 510 hours by Mr. Dacquisto). At the $900-per-hour cap imposed by the court, such services would equal to $1,303,380 in fees, which is in excess of the $835,794.10 in aggregate fees requested by the movants. Hence, the court concludes that the requested compensation is within the fee cap imposed by the court.

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 movants' services during the last interim period included, without limitation, the collection of receivables for the estate.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The court will approve the fees and expenses for the movants' last interim period. The movants' aggregate fees and expenses in the case will be approved on final basis as well.

The court will deny approval of the $2,523.80 in "costs[s] for services rendered on account of the bankruptcy estate, by John Reger," as there is no discussion in the motion of such costs and Mr. Reger's supporting declaration says nothing about such costs either.

9.	15-23164-A-7 DNL-4	JF MCCRAY PLASTERING, INC.	MOTION FOR ADMINISTRATIVE EXPENSES 3-3-16 [32]

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

The motion will be granted.

The trustee requests the allowance of payments of 2015 post-petition estate income tax liability to the California Franchise Tax Board in the amount of $800.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on April 17, 2015. The tax liability in question is for 2015 tax year end. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

10.	15-20865-A-7 RBB-2	JOHN/MERRIE HOLMAN	OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION 2-17-16 [180]

Tentative Ruling: The objection will be overruled.

Creditors Rodney and Shirley Brown object to the trustee's report of no

distribution, arguing that the debtors "should not be allowed to discharge" a mobile home asset they concealed and sold, giving the net sale proceeds to their son. The Browns also contend that the debtors have concealed other assets from the trustee. The Browns complain that the debtors have lied in disclosing their assets.

The trustee opposes the objection, contending that while the estate may hold an actionable avoidance claim against the son who received the net proceeds from the sale, the son no longer has the proceeds. He paid college and living expenses with them.

The court agrees with the trustee. The estate does not have the means to fund litigation against the debtors or their son, especially when the claims against son are uncollectible.

Additionally, the trustee has discovered no other consequential assets to the estate for liquidation. The Browns' allegation that the debtors have concealed other assets is conjecture.

As to the debtors' untruthfulness in this case, the United States Trustee has prosecuted an objection to discharge claim, resulting in denial of John Holman's discharge. Docket 172.

The objection will be overruled.

11. 15-28378-A-7 WILLIAM/APRIL MELARKEY — MOTION TO DISMISS CASE 2-5-16 [18]
UST-1

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

The U.S. Trustee moves for dismissal of this case pursuant to 11 U.S.C. § 707(b)(3)(B).

11 U.S.C. § 707(b)(3) provides that "In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider--

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse."

This motion is based solely on 11 U.S.C. § 707(b)(3)(B).

"*The rule adopted by the overwhelming majority of the courts considering the issue appears to be that a debtor's ability to pay his debts will, standing alone, justify a section 707(b) dismissal. See Cord, 68 B.R. at 7 (debtors who are able to pay their debts neither need nor deserve protection of chapter 7); Hudson, 56 B.R. at 419 (substantial abuse occurs whenever debtor has ability to repay substantial portion of his debts under chapter 13); Edwards, 50 B.R. at 937 (ability to pay principal amount of debts in three years is per se substantial abuse). We find this approach fully in keeping with Congress's intent in enacting section 707(b), and accordingly adopt it.*"

United States v. Kelly (In re Kelly), 841 F.2d 908, 914-15 (9th Cir. 1988); see also In re Lamug, 403 B.R. 47, 55 (Bankr. N.D. Cal. 2009) (agreeing with Kelly).

11 U.S.C. § 707(b)(1) provides for dismissal of a Chapter 7 case upon a finding of "abuse" by an individual debtor with "primarily consumer debts."

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

The debtors have admitted in their petition that their debts are primarily consumer debts for purposes of 11 U.S.C. § 101(8). They checked the "primarily consumer debts" box in the petition. Docket 1 at 1.

Further, the totality of the circumstances of the debtors' financial situation demonstrates abuse. The debtors have asserted monthly recurring expenses that are unreasonable, unnecessary or unsupported by the evidentiary record.

The U.S. Trustee challenges the following monthly expenses asserted by the debtors:

(1) $425 in medical expenses, beyond the $1,401.45 in monthly health insurance premiums for the debtors' six member household,

(2) $1,544 in private school tuition expenses for the debtors' four children,

(3) $558.84 in 401k loan payments, and

(4) $341 in loan payments to Rogerick Hogan, D.D.S., whose $21,024.63 loan is secured by the receivables of the debtor William Melarkey's Melarkey Dental Corporation.

The above expenses total $2,868.84.

The debtors' evidence in support of the $425 of additional medical expenses is inadmissible. In his declaration, Mr. Melarkey outlines different types of medical expenses represented by the $425 figure, but he cites to nothing in the record, such as receipts, to support his statements. Docket 30 at 4-5. His statements are hearsay at worst, and uncorroborated speculation at best. See Fed. R. Evid. 802. They refer to other, out of court statements, asserted for the truth of the matter therein. Fed. R. Evid. 801(a)-(c).

Further, the private school tuition, the 401k loan repayment and the Rogerick Hogan loan repayment expenses are not reasonably necessary.

The debtors' four children can receive their education at public schools. These are substantial expenses to the debtors that should not be incurred at the expense of their creditors. While the court understands the debtors' desire to have their children in private schools, to receive instruction consistent with their religious beliefs, the debtors' creditors should not have to subsidize this privilege. Many parents with children in public schools wish their children to attend similar private schools for the same reason. The private school tuition expenses are not reasonably necessary.

The debtors' 401k loan represents a debt to themselves. They can ask the loan administrator to treat their loan obligation as an early withdrawal, thus relieving themselves from the repayment obligation. Egebjerg v. Anderson (In re Egebjerg), 574 F.3d 1045, 1049, 1051 (9th Cir. 2009). The court will not allow the debtors to be repaying a loan to themselves at the expense of their creditors.

The Rogerick Hogan loan repayment expense is an unsecured debt vis a vis the debtors. Even though this obligation is secured by receivables, those receivables do not belong to the debtors. They belong to the Melarkey Dental Corporation, a separate and independent person. As such, in this case the Hogan loan is a general unsecured obligation and the court will not permit the debtors to repay a pre-petition general unsecured debt at the expense of their other general unsecured creditors.

In light of the foregoing, the debtors' expenses will decrease by $2,868.84, which will increase their net monthly income from a negative $1,581.42 to a positive $1,287.42. Over 60 months, whether in chapter 11 or chapter 13, the debtors will be able to repay $77,245.20 to unsecured creditors. This takes into account the debtors' latest amendments of Schedules I and J, decreasing their monthly income from $13,360 to $12,540.03. Dockets 1 & 10.

Hence, even in a chapter 11 case, where the debtors would have to spend approximately $35,000 in professionals' fees, their unsecured creditors would still receive approximately $42,000 more than they are receiving in this chapter 7 bankruptcy case. See Docket 31 at 2.

The totality of the debtors' subject circumstances demonstrates abuse under section 707(b)(3)(B). Accordingly, the motion will be granted and the case will be dismissed.

The court will overrule the U.S. Trustee's challenge to the debtors' amendments of Schedules I and J, decreasing their monthly income from $13,360 to $12,540.03, as neither the challenge, nor its supporting evidence was in the motion. The challenge with its supporting evidence was presented by the U.S. Trustee for the first time in the reply to the debtors' opposition to the motion. Docket 34 at 7; Docket 36, Ex. 8. As a result, the debtors have not had the opportunity to respond to this challenge.

12. 15-29880-A-7 ALICE VASQUEZ — MOTION TO AVOID JUDICIAL LIEN
DLM-1
VS. DISCOVER BANK — 2-8-16 [10]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $16,413.49 on May 23, 2011. The abstract of judgment was recorded with Sacramento County on January 17, 2012. That lien attached to the debtor's residential real property in Sacramento, California. The debtor seeks avoidance of the lien.

The motion will be denied as the evidence in support of the property's value is inadmissible. The debtor asserts that the property had a value of $146,000 as of the petition date "based on consultations with realtors . . . [and] visit[s] [of] several internet web sites for real estate comparable values." Docket 12 at 2.

But, what realtors and websites say about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from any realtors about the value of the property. The court also has no declaration from anyone working at the websites pursuant to which the debtor formulated her opinion of value, much less a declaration qualifying such unidentified websites as experts and establishing the methodology by which they determine the value of property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render her opinion of value. As a result, her opinion of value is inadmissible.

Further, 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, a managing or general agent, or other agent authorized by appointment or law to receive service of process." Docket 15. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

13.	15-29880-A-7 ALICE VASQUEZ	MOTION TO
	DLM-2	AVOID JUDICIAL LIEN
	VS. PORTFOLIO RECOVERY ASSOC., L.L.C.	2-8-16 [16]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, L.L.C. for the sum of $3,432.97 on October 11, 2013. The abstract of judgment was recorded with Sacramento County on March 10, 2014. That lien attached to the debtor's residential real property in Sacramento, California. The debtor seeks avoidance of the lien.

The motion will be denied as the evidence in support of the property's value is inadmissible. The debtor asserts that the property had a value of $146,000 as of the petition date "based on consultations with realtors . . . [and] visit[s] [of] several internet web sites for real estate comparable values." Docket 18 at 2.

But, what realtors and websites say about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from any realtors about the value of the property. The court also has no declaration from anyone working at the websites pursuant to which the debtor formulated her opinion of value, much less a declaration qualifying such unidentified websites as experts and establishing the methodology by which they determine the value of property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that she owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not

the basis upon which the debtor relies to render her opinion of value. As a result, her opinion of value is inadmissible.

THE FINAL RULINGS BEGIN HERE

14. 15-20302-A-7 TIMMY/JOSEPHINE MILLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 — 2-16-16 [26]
WELLS FARGO 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 granted in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Paradise, California.

Given the entry of the debtor's discharge on April 29, 2015, 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 $150,000 and it is encumbered by claims totaling approximately $207,955. The movant's deed is the only encumbrance against the property.

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

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) 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. 15-29509-A-7 TERRY/TARA CRAWFORD — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 2-16-16 [16]
GLOBAL LENDING SERVICES 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, Global Lending Services, seeks relief from the automatic stay with respect to a 2014 Ford Fiesta 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 December 8, 2015 and a meeting of creditors was first convened on January 11, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than January 7, 2016. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by 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 retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no 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 February 10, 2016, 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. The court also notes that the trustee filed a "no-asset" report on January 11, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on February 10, 2016.

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.

16. 15-20312-A-7 MARLAN/GLORIA FISHER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
MPD-5 — 2-25-16 [58]

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

Michael Dacquisto, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $6,937.50 in fees and $256.70 in expenses, for a total of $7,194.20. This motion covers the period from August 12, 2015 through February 20, 2016. The court approved the movant's employment as the trustee's attorney on August 14, 2015. In performing its services, the movant charged hourly rates of $350 and $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) reviewing papers concerning the debtors' inheritance of an interest in a real property, (3) reviewing a proposal from the debtors about avoiding a sale of the property, (4) assisting the estate with retaining a real estate broker for

marketing and sale of the property, (5) assisting the trustee with reviewing and responding to offers on the property, (6) preparing and prosecuting a motion for approval of sale of the property, and (7) preparing and filing employment and compensation motions.

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

17. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR ADMINISTRATIVE EXPENSES
CWC-21 — 2-29-16 [885]

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

The motion will be granted.

The trustee requests allowance of payments to the California Franchise Tax Board of post-petition estate income tax liability as follows:

- for 2013 in the amount of $1,081.52,

- for 2014 in the amount of $1,050.21,

- for 2015 in the amount of $878.52, and

- for 2016 in the amount of $800.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on April 30, 2012. The tax liability in question was incurred in 2013, 2014, 2015 and 2016. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

18. 13-23517-A-7 TRACY GATEWAY, L.L.C. — MOTION TO APPROVE COMPROMISE
HCS-10 — 2-29-16 [232]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and one of the debtor's former nonmanaging members, Richard Jones, named as a defendant in a pending adversary proceeding before this court, resolving the following causes of action: avoiding a fraudulent conveyance (under 11 U.S.C. § 544 and 550 and Cal. Civ. Code § 3439.04), an objection to claim, subordination of Mr. Jones' claim, and breach of fiduciary duty. The first three of the above-four claims are asserted also against Sutter Central Valley Hospitals.

Pre-petition, the debtor sold a real property to Sutter for approximately $6.738 million, when the fair market value of the property at that time was allegedly $17.6 million. As Sutter is a nonprofit organization, with authority to bestow certain tax benefits to donors, the debtor's members reaped a tax benefit from the purported undervalued sale of the property. By the foregoing claims, the trustee is seeking to recover the difference in value and sales price of the property, when sold, from Sutter and from the debtor's members, under 11 U.S.C. § 550(a).

Under the terms of the compromise, the trustee will dismiss the pending claims against Mr. Jones in exchange for withdrawal of his $270,700 proof of claim against the estate.

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 Mr. Jones' ongoing chapter 13 bankruptcy case (Case No. 12-40030-C-13), filed before the subject bankruptcy case was filed; given that Mr. Jones' chapter 13 plan was confirmed on December 16, 2013, prior to the filing of the estate's adversary proceeding against Mr. Jones; given that this settlement has been approved by the court presiding over Mr. Jones' bankruptcy case; given that the nonmanaging members have asserted that they did not participate in the debtor's decision to sell the property to Sutter; 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.

19. 15-28124-A-7 GARY/GRACE PALMA — MOTION TO AVOID JUDICIAL LIEN
JM-3
VS. CITIBANK, N.A. — 2-2-16 [29]

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 Grace Palma in favor of Citibank for the sum of $2,931.67 on October 16, 2013. The abstract of judgment was recorded with San Joaquin County on December 30, 2013. That lien attached to the debtor's residential real property in Lathrop, 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 $333,610 as of the petition date. Dockets 31 & 32. The unavoidable liens totaled $410,265.57 on that same date, consisting of two mortgages in favor of JPMorgan Chase Bank. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Dockets 31 & 32.

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).

20. 15-27925-A-7 BILLIE SPENCE AND DELANA SCOTT — MOTION TO AVOID JUDICIAL LIEN
ALF-2
VS. HERITAGE COMMUNITY CREDIT UNION — 2-18-16 [25]

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

The motion will be granted.

A judgment was entered against debtor Delana Scott in favor of Heritage Community Credit Union for the sum of $2,053.92 on January 27, 2015. The

abstract of judgment was recorded with Sacramento County on April 7, 2015. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $267,861 as of the petition date. Dockets 27 & 28. The unavoidable liens totaled $231,485 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank for $229,192 and a tax lien in favor of the California Franchise Tax Board for $2,293. Dockets 27 & 28. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 27 & 28.

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).

21. 15-29925-A-7 LISA PERRY — MOTION TO CONVERT CASE TO CHAPTER 13
SJS-1 — 3-14-16 [14]

Final Ruling: The motion will be dismissed without prejudice because it was set for hearing on 14 days notice in violation of Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days notice of the hearing on conversion motions. The motion was served on March 14, 2016, 14 days prior to the March 28 hearing. Docket 17. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(4) requires a minimum of 21 days of notice of the hearing and because only 14 days' notice was given, notice is insufficient.

22. 16-21235-A-7 SHANE/LEIGHA MORO — ORDER TO SHOW CAUSE
3-11-16 [11]

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 debtors did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtors paid the fee in full on March 14, 2016. No prejudice has resulted from the delay.

23. 09-20140-A-7 SHASTA REGIONAL MEDICAL CENTER, L.L.C. — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
BLL-34 — 2-29-16 [802]

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.

Wayne Ryan, C.P.A., accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $12,500 in fees and $0.00 in expenses. This motion covers the period from May 4, 2009 through January 6, 2016. The court approved the movant's employment as the estate's accountant on April 29, 2009. In performing its services, the movant charged hourly rates of $125 and $150.

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 review of financial documents of the debtor and the preparation of estate tax returns for eight tax years.

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

24. 16-20241-A-7 PATRICK HUSMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 2-17-16 [11]

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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2002 Audi TT-180. The movant has produced evidence that the vehicle has a value of $6,500 and its secured claim is approximately $7,328.

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 February 24, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it 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's vehicle is being used by the debtor without compensation and it is depreciating in value.

25. 15-29046-A-7 FRANK/ELAINE JULIANO — MOTION FOR RELIEF FROM AUTOMATIC STAY
MET-1 — 2-22-16 [15]
BANK OF THE WEST 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 in part and dismissed as moot in part.

The movant, Bank of the West, seeks relief from the automatic stay as to a real property in Trinidad, Colorado.

Given the entry of the debtor's discharge on February 22, 2016, 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. While the movant proffers a broker's price opinion valuing the property at $64,500, the BPO is inadmissible as it has not been authenticated by a declaration of the person who prepared it. As such, the court does not have admissible evidence of value for the property from the movant.

Nevertheless, the trustee filed a report of no distribution on March 7, 2016. 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.

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.

26. 16-20546-A-7 ROBERT/KIM STETSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
FIRST TECH FEDERAL CREDIT UNION VS. — 2-22-16 [11]

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, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2013 Nissan Sentra. The vehicle has a value of $10,736 (per Schedule B) and its secured claim is approximately $23,790.

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 February 25, 2016. And, the debtors have filed a non-opposition to this motion.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it 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's vehicle is being used by the debtor without compensation and it is depreciating in value.

27. 15-26755-A-7 ALICIA MIRAMONTES — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-2
WELLS FARGO BANK, N.A. VS. — 2-29-16 [33]

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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Santa Anna, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

In 2008, Manuel Miramontes III and Melissa Miramontes borrowed $367,000 to purchase the subject property.

On June 18, 2014, without consent of the movant, Manuel and Melissa Miramontes transferred the property to themselves and Raul Romero, as joint tenants. Mr. Romero filed a bankruptcy case in the Central District of California on March 10, 2015. Docket 37, Ex. 4.

On March 15, 2015, without consent of the movant, Manuel and Melissa Miramontes transferred the property to themselves and the debtor, as tenants in common. Docket 37, Ex. 4. The debtor filed the instant chapter 7 case on August 27, 2015.

The motion will be granted as to the debtor under section 362(d)(1) for cause because the property is not listed in the debtor's schedules, the movant's claim is also not listed in the debtor's schedules, and the movant's consent was not obtained prior to the property interest transfers.

The debtor's Schedule A lists interest only in a real property in Stockton, California. Schedule D lists only Ally Financial and Nationstar Mortgage as secured creditors. Docket 1.

The court will lift the stay as to the estate under section 362(d)(1) as well, given the debtor's denial in the schedules of owning an interest in the property, given the questionable partial transfers of the property to Mr. Romero and the debtor, and given that the property has been on the verge of foreclosure for while now.

The transfers are questionable as they appear to be in anticipation of filing for bankruptcy by the transferees. The transfer to Mr. Romero purportedly took place approximately eight months prior to his filing for bankruptcy. The transfer to the debtor purportedly took place approximately six months prior to her filing this case. Also, the last names of the original borrowers are the same as the debtor's last name, strongly suggesting that the debtor knows the original borrowers and was aware of the transfer involving her, when it took place.

Further, the property appears to have been on the verge of foreclosure for some time now, as the original borrowers were compelled to enter into a loan modification agreement with the movant in January 2014. Docket 35.

Thus, the motion will be granted as to both the debtor and 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.

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

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

Finally, the court will grant relief under section 362(d)(4), which prescribes 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.*"

From the multiple unauthorized transfers of the property and multiple bankruptcy filings by the transferees, the court infers that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, involving both section 362(d)(4)(A) and (d)(4)(B). Accordingly, the court will grant relief under section 362(d)(4).

28. 16-20261-A-7 KARYN BRIZZI — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 2-25-16 [12]
FREEDOM MORTGAGE CORPORATION 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, Freedom Mortgage Corporation, seeks relief from the automatic stay as to a real property in Belfair, Washington. The property has a value of $10,000 and it is encumbered by claims totaling approximately $188,076. Docket 1, Schedule A. 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 February 18, 2016.

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.

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.

29. 15-29568-A-7 ROBIN OSBORNE — MOTION TO DISMISS OR CONVERT CASE 2-29-16 [13]
UST-1

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

The motion will be granted and the case will be dismissed.

The U.S. Trustee moves for dismissal of this case pursuant to 11 U.S.C. § 707(b)(3)(B). In the alternative, the U.S. Trustee asks for conversion to chapter 13, assuming the debtors consent to such conversion.

11 U.S.C. § 707(b)(3) provides that "In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider--

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse."

This motion is based solely on 11 U.S.C. § 707(b)(3)(B).

"*The rule adopted by the overwhelming majority of the courts considering the issue appears to be that a debtor's ability to pay his debts will, standing alone, justify a section 707(b) dismissal. See Cord, 68 B.R. at 7 (debtors who are able to pay their debts neither need nor deserve protection of chapter 7); Hudson, 56 B.R. at 419 (substantial abuse occurs whenever debtor has ability to repay substantial portion of his debts under chapter 13); Edwards, 50 B.R. at 937 (ability to pay principal amount of debts in three years is per se substantial abuse). We find this approach fully in keeping with Congress's*

intent in enacting section 707(b), and accordingly adopt it."

United States v. Kelly (In re Kelly), 841 F.2d 908, 914-15 (9th Cir. 1988); see also In re Lamug, 403 B.R. 47, 55 (Bankr. N.D. Cal. 2009) (agreeing with Kelly).

11 U.S.C. § 707(b)(1) provides for dismissal of a Chapter 7 case upon a finding of "abuse" by an individual debtor with "primarily consumer debts."

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

The debtor has admitted in her petition that her debts are primarily consumer debts for purposes of 11 U.S.C. § 101(8). The debtor checked the "primarily consumer debts" box in the petition. Docket 1 at 6.

Further, the totality of the circumstances of the debtor's financial situation demonstrates abuse. The debtor's own schedules reflect that her household income exceeds her household expenses by $611.48. Docket 20, Amended Schedule J. With such disposable monthly income, the debtor could repay over 60 months approximately 79% of her $46,321 in general unsecured debt. She has no priority debt. Docket 1, Schedules E and F.

The debtor has not filed a response to this motion, disputing her statements in the bankruptcy schedules. Also, the time for responding to the motion has expired. Responses to the motion were due 14 days prior to the hearing.

Given the foregoing, the totality of the circumstances of the debtor's financial situation demonstrates abuse. The motion will be granted and the case will be dismissed.

30. 15-26281-A-7 STEPHEN TRUMAN — MOTION TO CONVERT CASE 3-10-16 [54]
MRL-1

Final Ruling: The motion will be dismissed without prejudice because it was set for hearing on 17 days notice in violation of Fed. R. Bankr. P. 2002(a)(4), which requires at least 21 days notice of the hearing on conversion motions. The motion was served on March 11, 2016, 17 days prior to the March 28 hearing. Docket 58. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(4) requires a minimum of 21 days of notice of the hearing and because only 17 days' notice was given, notice is insufficient.