UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 9, 2016 at 10:00 a.m.

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

1, 5, 11

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 JUNE 6, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 23, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 31, 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. 13-35308-A-7 DOROTHY PARENT — MOTION TO EMPLOY
HCS-9 — 4-25-16 [413]

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 permission to employ Jay Richter as a real estate broker for the estate, to market and list for sale a real property in Red Bluff, California. The proposed compensation for Mr. Richter will be the customary 6% commission, which is to be split in the event of a buyer's agent.

11 U.S.C. § 327(a) states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a).

11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis."

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

2. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-25
VS. RICHARD BAGWELL — 3-24-16 [914]

Tentative Ruling: The objection will be sustained as provided by the ruling below.

On July 1, 2012, claimant Richard Bagwell filed a priority unsecured proof of claim in the amount of $39,616.48 (claim no. 29-1), consisting of:

- $4,835.38 in wages, earned from March 1, 2012 through March 19, 2012,

- $6,593.70 for 15 days of vacation pay (at $439.58 per vacation day), earned from January 1, 2010 through March 19, 2012,

- $15,000 for a bonus earned from September 1, 2010 through September 1, 2011, and

- $13,187.40 in waiting time penalties.

POC 29-1.

The trustee objects to the proof of claim, disputing the classification of the claim, asking the court to reclassify $27,891.48 of the claim as a general unsecured claim, leaving $11,725 as a priority.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

The $13,187.40 in penalties are not included in the priority classification by section 507(a)(4). Penalties of any nature are not allowed as priority by the provision.

Based on this case's filing date of April 30, 2012 - as the court has no evidence when precisely the debtor ceased doing business, the court calculates the 180 days for section 507(a)(4) purposes to have started on November 2, 2011. The claimant's $15,000 bonus falls outside this 180-day period. It was earned from September 1, 2010 through September 1, 2011.

The court sees nothing in the record to support the trustee's contention that "the major portion of the $15,000 alleged for unpaid bonus appears to have been earned within 180 days before filing of the bankruptcy case or earned within 180 days before the date of cessation of Debtor's business, whichever is earlier under 11 U.S.C. § 507(a)(4) and thus would qualify for unsecured priority status." Docket 916 at 3.

The $15,000 bonus part of the claim will be reclassified as a general unsecured claim.

The $6,593.70 for 15 days of vacation pay will be also reclassified also as a general unsecured claim. The court cannot tell from the proof of claim whether any of those 15 vacation days were accrued during the 180-day period of section 507(a)(4).

Finally, the $4,835.38 in wages were earned within the 180-day period of section 507(a)(4), from March 1, 2012 through March 19, 2012.

In summary, only the $4,835.38 in wages will remain classified as a priority claim and the remaining $34,781.10 will be reclassified as a general unsecured claim.

3. 14-29813-A-7 LISA AHRENS — MOTION FOR STAY PENDING APPEAL
BN-1 — 4-25-16 [102]

Tentative Ruling: The motion will be granted in part.

Creditor Golden 1 Credit Union moves under Fed. R. Civ. P. 62(d), as made

applicable here by Fed. R. Bankr. P. 7062, for a stay pending the appeal of this court's April 19, 2016 order sustaining the trustee's objection to the general unsecured claim of Golden 1, to the extent the order requires Golden 1 to pay the trustee's attorney's fees and costs. Docket 95.

Fed. R. Bankr. P. 8007 requires an appellant initially to seek a stay pending an appeal from a bankruptcy court judgment from the bankruptcy court. Fed. R. Bankr. P. 8007(a)(1)(A) & (C).

A trial court has discretionary authority to stay proceedings in its own court. Lockyer v. Mirant Corp., 398 F.3d 1098, 1109, 1111 (9th Cir. 2005); Fed. R. Bankr. P. 8007(a)(1).

The standard governing imposition of discretionary stays focuses on a balance of: whether the appellant is likely to succeed on the merits of the appeal, whether the appellant will suffer irreparable injury, whether substantial harm will come to the appellee, and the effect, if any, on the public interest. Schwartz v. Covington, 341 F.2d 537 (9th Cir. 1965); Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.), 191 B.R. 433, 444 (E.D. Cal. 1995) (Wanger, D.J.), aff'd, 128 F.3d 1294 (9th Cir. 1997); Ohanian v. Irwin (In re Irwin), 338 B.R. 839, 845 (E.D. Cal. 2006) (Ishii, D.J.); Wymer v. Wymer (In re Wymer), 5 B.R. 802, 806 (B.A.P. 9th Cir. 1980) (citing Schwartz v. Covington, 341 F.2d 537 (9th Cir. 1965)); Dynamic Fin. Corp. v. Kipperman (In re N. Plaza, LLC), 395 B.R. 113, 119 (S.D. Cal. 2008); CWS Enterprises, Inc. v. Freidberg & Parker (In re CWS Enterprises, Inc.), Case No. 09-26849-C-11, 2011 WL 10639726, at *4 (Bankr. E.D. Cal. Aug. 16, 2011).

As there was no dispute over the facts giving rise to the trustee's objection, the question on appeal will be purely a legal one – whether Golden 1 is entitled to a deficiency general unsecured claim against the debtor's bankruptcy estate, although the debtor is current on her payments to Golden 1 under their loan agreement and, aside from filing this bankruptcy case, the debtor is not otherwise in default under that agreement. The standard of review for questions of law on appeal is de novo.

In this case, Golden 1 was not able to assert, much less explain a cognizable legal theory for its deficiency unsecured claim against the debtor's estate. It simply argued that the vehicle was worth less than what was owed on the loan, entitling it to a distribution in par with the other general unsecured creditors.

Golden 1 is unlikely to succeed on the merits on appeal as it has no legal basis upon which it can assert a deficiency unsecured claim against the estate. As Golden 1 would have no legal basis to assert a deficiency unsecured claim against the debtor *outside of bankruptcy* - while the debtor is current on and Golden 1 is voluntarily accepting her monthly vehicle payments, Golden 1 has no such legal basis against the debtor's bankruptcy estate either. After all, the legal basis for a claim against the estate is the legal basis for the same claim against the debtor outside of bankruptcy.

On the other hand, Golden 1 will suffer irreparable harm if it pays the trustee's attorney's fees and costs and the estate is administered, but then Golden 1 wins on appeal. Administration of the estate during the pendency of the appeal may make disgorgement by the estate after an appellate win by Golden 1 impossible, difficult or partial.

The court sees no substantial harm to the estate in the staying of the payment

of attorney's fees and costs. The estate has litigated thus far without the assurance of prevailing on the merits and with full knowledge that it has no assets to fund the litigation in the event it loses. Obviously, these have not been impediments to the estate retaining an attorney to prosecute the litigation. And, given the substantial experience of the trustee and his counsel, the estate would not have commenced this litigation without taking into account the high probability of an appeal.

Staying of the payment of attorney's fees and costs does not negatively impact public interest. As mentioned above, the estate has had no trouble retaining an attorney to prosecute the subject litigation, despite the uncertainty of attorney compensation. The court perceives no harm to third parties in staying the payment of the attorney's fees and costs.

Further, the order sustaining the trustee's objection to Golden 1's claim is in effect a money judgment, arguably subject to the as-a-matter of right stay of Fed. R. Civ. P. 62(d). See Fed. R. Bankr. P. 7062 (making Fed. R. Civ. P. 62 applicable in adversary proceedings).

Rule 62(d) provides that:

"If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2) [non-money judgments]. The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond."

The court will stay payment of the attorney's fees and costs, pending Golden 1's appeal.

In exercising its discretion, the court will order Golden 1 to post a bond for 150% of the amount of the order for attorney's fees and costs. Fed. R. Bankr. P. 8007(a)(1)(B); Fed. R. Civ. P. 62(d).

Finally, Golden 1's complaint that the trustee did not "lodge[] for comment [with Golden 1,] as required under LBR 9004-1(e)(3)," the order sustaining the objection, is not accurate. Docket 102 at 2.

First, this motion is not seeking any relief pertaining to the trustee's alleged violation of Local Bankruptcy Rule 9004-1(e)(3).

Second, the trustee could not have violated Local Bankruptcy Rule 9004-1(e)(3) because the court did not require the trustee to obtain Golden 1's approval as to the form of order. Rule 9004-1 is triggered only if the court requires the submission.

Local Bankruptcy Rule 9004-1(e)(3) provides that:

"*If the court at the hearing on the matter, or by separate order, requires that any attorney or unrepresented party appearing in the matter be provided the opportunity to review and approve a form of order or judgment prior to its submission, the proposed order or judgment shall, just below the space reserved for placement of the judge's signature, contain the signatures of such counsel or party indicating their approval. Approval indicates only that the document accurately reflects the ruling of the court and does not constitute agreement or waiver of appellate rights. Orders not bearing the signature of an attorney or unrepresented party designated by the court to approve the form of the order*

shall not be lodged with the court for at least three days after transmission to that attorney. In the event a dispute arises regarding the form of order, the submitting counsel or party shall submit, along with the proposed order, a brief declaration summarizing the reason for the lack of approval by the attorney or unrepresented party, along with a proof of service demonstrating service of the proposed form of order and the declaration on the non-approving counsel or party."

Third, in fact the trustee submitted the order for approval as to form to Golden 1 on April 15, 2016 as a courtesy. Docket 111, Ex. A. After not receiving no response, the trustee inquired with Golden 1 once again on April 18 whether it would sign off on the order. Id.

Fourth, at the April 11 hearing on the objection, the court told the parties that the prevailing party (*i.e.*, the trustee) was to prepare an order and lodge it with the court.

On April 11 the court also told the parties that the court's ruling on the objection would be appended to the minutes for that hearing and that ruling would be the court's findings of fact and conclusions of law. The court did not ask anyone to prepare its findings of fact and conclusions of law.

Notwithstanding the foregoing, Golden 1 prepared its own order on the objection as well as proposed findings of fact and conclusions of law, demanding the trustee to agree with them and submit them to the court. Docket 111, Ex. A.

Golden 1's April 18 email tells the trustee:

"*Attached are our proposed findings and conclusions, together with a proposed order sustaining the trustee's claim objection and providing for the fee award to be held in trust pending resolution of the appeal of this order.*

". . .

"*Please let me know whether the trustee will agree to submit the attached findings and conclusions and corresponding order to the court.*"

Docket 111, Ex. A.

Fifth, as seen from Golden 1's April 18 email above, in seeking to lodge its own order on the objection, Golden 1 unilaterally altered the relief awarded by the court in sustaining the trustee's objection. Golden 1's proposed order provided for "the fee award to be held in trust pending resolution of the appeal," when the court did not condition its award of attorney's fees and costs to the trustee.

Sixth, in its April 18 email, Golden 1 further stated:

"*The proposed findings and conclusions are taken from the court's minute order. The only substantive revision to the minute order that we have made is to clarify a finding that is inconsistent with what the judge said on the record at the hearing. At the April 11 hearing the judge agreed that Golden 1 had not waived its argument that Penrod does not apply here, however the civil minute order states that the argument is waived. Consistent with the court's statement at the hearing, the attached findings and conclusions do not recite that any waiver occurred.*"

Docket 111, Ex. A.

Once again, the court did not ask anyone to prepare findings of fact and conclusions of law. On April 11, the court told the parties that the court's ruling on the objection will be appended to the minutes for that hearing and that will serve as the court's findings of fact and conclusions of law.

As there is ample opportunity for confusion and misstatements in the discussions in open court hearings, this court typically does not adopt those discussions as its findings of fact and conclusions of law. The court's findings and conclusions are in writing attached to the minutes for the April 11 hearing. Docket 91. The court has been doing this for every matter on its law and motion calendars for over 20 years.

And, Golden 1 did waive its argument that Penrod does not apply because it failed to raise the argument in its initial opposition to the trustee's objection. While the court continued the hearing on the objection, it did so only to permit further briefing on the reasonableness and necessity of the trustee's attorneys' fees. Further, despite concluding that Golden One had failed to raise the inapplicability of Penrod timely, the court's ruling nonetheless addresses its merit, or lack thereof. If the court said anything at the continued hearing to the indicating Golden One had not waived this argument, it was unintended.

4. 15-29925-A-7 LISA PERRY — MOTION TO CONVERT CASE 4-18-16 [26]
SJS-2

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

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

However, while the debtor has established that she is within the eligibility debt limits for chapter 13 relief, the motion states nothing about whether the debtor has regular income to fund a chapter 13 plan. The motion contains no evidence of regular income. Accordingly, it will be denied.

5. 15-29033-A-7 FRANCISCO PENA — MOTION TO ABANDON 4-18-16 [62]
CDH-2

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 wishes to abandon the estate's interest in three real properties, in Vacaville, in Fairfield (Clay Street), and in Hayward, California. The properties are over-encumbered.

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

The Vacaville property has an approximate value of $1,050,000, whereas its encumbrances total approximately $1,346,166.21.

The Fairfield property has an approximate value of $187,000, whereas its encumbrances total approximately $393,336.

The Hayward property has an approximate value of $379,900, whereas its encumbrances total approximately $604,539.

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

6. 15-20034-A-7 C & N LANDSCAPE MAINTENANCE, INC.
RPM-1 FORD MOTOR CREDIT COMPANY, L.L.C. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
10-28-15 [82]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay with respect to a 2013 Ford F150.

The motion will be denied. The movant's evidence of value for the vehicle is inadequate. The Kelly Blue Book pages attached to the motion list many Ford F150 vehicles with variety of options. Yet, the subject vehicle's options are not described in the supporting declaration. Dockets 84 & 85.

The supporting declaration also does not state whether the vehicle's proffered value is trade-in, private party or retail.

This is important as, even according to the movant, there is over $3,000 of equity in the vehicle. The supporting declaration states that the vehicle has a value of $21,900 and its secured claim is approximately $18,781. Docket 84. This means that relief under 11 U.S.C. § 362(d)(2) cannot be granted.

Due to the inadequacy in evidence of value and the impending meeting of creditors on May 11, the court is unwilling to lift the stay under section

362(d)(1) either.

7. 16-22140-A-7 TANYA LARA — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 4-11-16 [17]
TM INVESTMENTS, INC. VS.

Tentative Ruling: The motion will be granted.

The movant, TMM Investments, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California.

The movant purchased the property at a pre-petition foreclosure sale, on February 23, 2016. On March 2, the movant served the debtor with a notice to vacate. On March 17, the movant commenced an unlawful detainer proceeding. On March 24, after the entry of the debtor's default, the state court entered a judgment for possession for the movant. Docket 21, Exs. A-D. The debtor filed the instant petition on April 4.

The debtor opposes the motion, challenging the validity of the state court judgment.

The debtor may not collaterally challenge the state court's judgment for possession in this court. This court is not the appellate court for the state court. The debtor must go to state court to challenge the judgment of the state court.

More, this is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This alone is cause for the granting of relief from stay.

Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to resolve their dispute over the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property, to the extent permitted by the state court.

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

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

8. 15-29258-A-7 JAMES KEMPVANEE — MOTION TO DISMISS CASE
SLC-2 — 4-13-16 [24]

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

The trustee moves for dismissal, contending that after the debtor appeared once at the meeting of creditors and the trustee continued the meeting in order for the debtor to bring his social security card, the debtor failed to appear at three subsequent meetings, including those on March 9, 2016, March 23, 2016 or April 13, 2016. The trustee even provided the debtor with the opportunity to verify his social security card with the U.S. Trustee's office. The debtor has failed to respond to any of the trustee's communications.

The debtor's failure to verify his social security card, to respond to the trustee, or appear at the above three creditors' meetings has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

9. 11-34464-A-7 STUART SMITS — ORDER TO APPEAR FOR EXAMINATION (STUART LANSING SMITS) 10-14-15 [61]
11-2636
BARDIS V. SMITS

Tentative Ruling: None. The judgment debtor shall appear and be sworn in prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

10. 15-29771-A-7 PAUL/ALICE SALINAS — OBJECTION TO CLAIM 3-17-16 [19]
LRR-1
VS. AMADOR RIDGE, L.L.C., C/O SIERRA PACIFIC INDUSTRIES

Tentative Ruling: The objection will be overruled.

The debtor objects to the February 8, 2016 $165,524.51 general unsecured proof of claim of Amador Ridge, L.L.C., contending that it is based on a debt owed by their limited liability company, Alas-One Sacramento, L.L.C., to SPI/Catlin Martell II. The debtors also complain that the proof of claim attaches no assignment from SPI/Catlin Martell to Amador Ridge and that there is a survival of bankruptcy provision in the note, while it lacks a severability provision.

Amador Ridge opposes the objection.

The objection will be overruled because the debtors have not alleged their standing to object to claims.

Their mere status as debtors is not sufficient. Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in his individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004). For instance, is this a surplus estate such that if this claim is disallowed, the debtor would receive a dividend? Are there nondischargeable claims such that disallowance of this claim will increase the dividend to the nondischargeable claims and thereby reduce the debtor's remaining nondischargeable liability?

The objection says nothing about the debtor's standing.

Further, the basis for the proof of claim is that the debtors guaranteed a debt incurred by their corporation. The guaranty is attached to the proof of claim. POC 1.

The debtor's challenge to the lack of an assignment between SPI/Catlin Martell and Amador Ridge is disingenuous as the debtors' own exhibits show that the proof of claim appends a "Modification to Promissory Note" identifying SPI/Catlin Martell as "succeeded by Amador Ridge, LLC," and the Modification has been executed by debtor Alice Salinas. Docket 22 at 5.

Lastly, the promissory note upon which the proof of claim is based contains a

severability clause. Docket 22 at 9, ¶ 18. Such clause appears to preserve the note even if the improper bankruptcy provision in the note is deemed invalid. Docket 22 at 9, ¶ 18. The objection will be overruled.

11. 11-48272-A-7 ANNE MARQUEZ — MOTION TO APPROVE COMPROMISE
HSM-4 — 4-12-16 [74]

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and Louise Gale-Cummings and David Cummings, resolving a pending adversary proceeding by the trustee for, among other things, the reformation of an agreement between the debtor and the Cummings. Under the agreement, the debtor agreed to sell to the Cummings a real property in Winters, California. As part of the agreement, the debtor conveyed the property to the Cummings. The Cummings made a $26,900 down payment toward the purchase price and the remainder $209,910 was financed by the debtor.

The Cummings have missed some payments under the financing agreement but the agreement, with the deed, does not provide for a power of sale in the event of a default. Through the adversary proceeding, the trustee has been seeking to reform the agreement to include a power of sale in order to initiate foreclosure proceedings as to the property.

The trustee contends that the Cummings owe in excess of $235,000 under the agreement with the debtor, including both unpaid principal and interest. The Cummings are contending that the total amount owed by them is $206,930.

Under the terms of the compromise, the Cummings have agreed to convey the property to the estate, subject to the trustee receiving a title insurance policy and the Cummings satisfying or removing an utilities lien against the property. The Cummings must also surrender possession of the property to the trustee. The Cummings are also required to maintain the property and keep insurance on the property current, pending conclusion of the settlement.

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

610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the property is subject to a senior encumbrance that has been in default for much time, given that the senior mortgagee has discretion in allowing the trustee to administer the property, given that the trustee is saving much valuable time in recovering the property through the settlement, and given the inherent costs, risks 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.

12. 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.

13. 14-25389-A-7 FRANK NAVARRETTE — MOTION TO SELL
HSM-3 — 4-8-16 [183]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $350,000 the estate's interest in a real property in Elk Grove, California to Michael and Lori Bencivengo. The property has a scheduled value of $260,000. The trustee also asks for approval of the payment of the real estate commission.

The encumbrances against the property include:

- a $154,000 mortgage in favor of Nationstar,

- a $6,180 mortgage in favor of the California Housing Finance Agency,

- a $43,503 mortgage in favor of the Secretary of Housing and Urban Development,

- a lien for a judgment for child, family or spousal support in an unknown amount – but apparently not for more than $62,000, in favor of the Sacramento County Bureau of Family Support

- $550.80 in utility liens held by Sacramento County, and

- potentially another $787.59 in utility liens.

Although the Bureau of Family Support lien is in an unknown amount, the trustee anticipates the lien not to exceed $62,000, based on a proof of claim filed by the debtor's former spouse for that amount, as pertaining to the lien. The trustee anticipates that a benefit will be realized by the estate. The trustee expects no adverse tax consequences from the sale.

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

The court estimates that the sale will generate in excess of $50,000 for the benefit of the estate and the creditors. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will authorize payment of the real estate commission, in accordance with the approved terms of employment for the estate's real estate broker.

14. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO CONVERT CASE TO CHAPTER 7 4-22-16 [47]
LCR-1

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

The court continued the hearing on this motion from May 2 in order to consider converting the case to chapter 7 in the event no one is willing to serve as a chapter 11 trustee. The ruling from May 2 follows below.

Creditor Fairview Holdings II, L.L.C., moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing unauthorized use of cash collateral, non-existence of a DIP account and undisclosed assets.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- . . . (B) gross mismanagement of the estate; . . . (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(D), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtors filed this case on March 15, 2016. At the meeting of creditors, the debtor Aiad Samuel admitted to collecting rent - at least some of which is being paid with checks - from tenants at a shopping center they own, and using the rents to pay expenses associated with the shopping center. Mr. Samuel also

admitted that he was not utilizing and did not have a DIP account for purposes of managing the estate's cash.

Further, Mr. Samuel admitted to owning property in Hawaii and San Bernardino, California, although such property has not been disclosed in the schedules. The schedules also fail to disclose two retirement accounts with nearly $1 million.

The debtors' use of cash collateral without court approval, their failure to establish and use a DIP account, their blatant disregard for the complete and accurate disclosure of assets, and their ongoing mismanagement of the estate, is cause for conversion or dismissal.

Some of the debtor's assets clearly contain equity that may be liquidated and there appears to be an urgent need for a neutral investigation and evaluation of the debtors' assets and liabilities.

Nevertheless, as the court cannot tell from the incomplete bankruptcy petition documents whether and to what extent there are unsecured creditors in the case, the court is not convinced that conversion to chapter 7 is warranted. Rather, the court will order the appointment of a chapter 11 trustee.

11 U.S.C. § 1104(a) provides that:

"*At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—*

"*(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or*

"*(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.*"

The facts outlined above amount to cause for the appointment of a chapter 11 trustee. Mr. Samuel's appearance at the May 2 hearing on this motion has only confirmed this. Mr. Samuel admitted in open court that he is mismanaging the estate by not listing all assets and liabilities in the bankruptcy schedules and statements, by using cash collateral without a court order, by paying potentially pre-petition claims without a court order, and by utilizing professionals - including an attorney and a bookkeeper and/or tax preparer - without a court order authorizing their employment.

The court also notes that even though this case was filed on March 15, 2016, the debtors have filed no operating reports. A report for the latter part of March was due on April 14. 11 U.S.C. §§ 1107(a), 704(a)(7), (8); Local Bankruptcy Rule 2015-1(a), (c).

Accordingly, the court will appoint a chapter 11 trustee. In the event no one is willing to serve as a chapter 11 trustee, the court will consider again whether conversion to chapter 7 is appropriate at a continued hearing on May 9, 2016 at 10:00 a.m.

Finally, Fairview requests that this Court enter an order requiring the debtors to comply with the requirements of Bankruptcy Rule 1019 after conversion of this case, including, but not limited to,

(i) requiring them to file full and complete lists, inventories, and amended schedules and statement of financial of affairs required by Bankruptcy Rule 1019(1)(A) and 1007(b),

(ii) directing them to forthwith turn over to the chapter 7 trustee all records and property of the estate under its custody or control as required by Bankruptcy Rule 1019(4),

(iii) filing a schedule of all unpaid debts incurred after the commencement of the chapter 11 case including the name and address of each creditor as required under Bankruptcy Rule 1019(5)(A); and

(iv) filing and transmitting to the United States Trustee a final report and account as required by Bankruptcy Rule 1019(5)(B).

This part of the motion will be denied.

Although the debtors have filed most of their schedules, the content of those schedules is devoid of much information. For instance, as mentioned above, Schedule A lists no real property in Hawaii or San Bernardino, California. Schedule A, as other schedules and petition documents, also include phrases such as "to come," admitting that those documents are incomplete. Docket 31.

Nevertheless, the court will deny the requests to require "full and complete" petition documents and to turn over to the chapter 7 trustee records and estate property. Fed. R. Bankr. P. 1019 & 1007 and 11 U.S.C. §§ 541 & 542 already require the debtors to do these things. Entering an order requiring them to do these things is redundant.

The same is true with respect to Fed. R. Bankr. P. 1019(5) which provides:

(A) Conversion of chapter 11 or chapter 12 case

"*Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:*

"*(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and*

"*(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;*

(B) Conversion of chapter 13 case

"*Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,*

"*(i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and*

"*(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account.*"

Fed. R. Bankr. P. 1019(5)(A) already requires the debtors to account for post-petition debts and to file a final report and account. See Fed. R. Bankr. P. 1019(5)(A). The motion will be granted in part and denied in part.

FINAL RULINGS BEGIN HERE

15. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-23
VS. MICHAEL SPILLER — 3-24-16 [929]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On June 21, 2012, claimant Michael Spiller filed an amended proof of claim in the amount of $21,457.26 (claim no. 21-1), all classified as a priority claim under 11 U.S.C. §§ 507(a)(4) and (a)(5), including:

- $2,076.96 in wages, earned in March 2012, representing 48 hours at $43.27 an hour,

- $6,923.20 for 160 hours of vacation pay (at $43.27 an hour), earned from March 30, 2009 through March 19, 2012,

- $384 as liquidated damages for violations of Cal. Labor Code § 1194.2, and

- $346.16 a day as penalties.

POC 21-1.

The claimant has also attached to the proof of claim a statement of his 401K PS Plan, reflecting a partial withdrawal from his account.

The trustee objects to the proof of claim, disputing the classification of the claim amount, asking the court to classify the claim, except for $2,076.96, as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4) and (5), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*

". . .

"*(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan--*

"*(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only*

"*(B) for each such plan, to the extent of--*

"*(i) the number of employees covered by each such plan multiplied by $12,8501; less*

"*(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.*"

Initially, the court sees nothing in the attachments to the proof of claim reflecting unpaid contributions to an employee benefit plan. The court cannot discern from the 401K statement what, if anything, the debtor did not pay as a contribution to the claimant's benefit plan. To the extent the proof of claim asserts such basis for any portion of the claim, the proof of claim will be disallowed.

Next, the court will disallow the liquidated damages and penalties as priority, as section 507(a)(4) does not provide for such categories to be afforded priority status.

Further, based on this case's filing date of April 30, 2012 - as the court has no evidence when the debtor ceased doing business, the court calculates the 180 days for section 507(a)(4) purposes to have started on November 2, 2011.

The $6,923.20 for 160 hours of vacation pay will be reclassified as a general unsecured claim. The court cannot tell from the proof of claim whether any of those 160 hours were accrued during the 180-day period of section 507(a)(4).

Finally, the $2,076.96 in wages clearly fall within the 180-day period of section 507(a)(4). The wages were earned in March 2012 and the case was filed on April 30, 2012.

Accordingly, the court will reclassify the claim as a general unsecured claim except for the $2,076.96 in wages, which will remain classified as priority. The objection will be sustained.

16. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-24
VS. LYLE MCGUIRE — 3-24-16 [924]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On June 21, 2012, claimant Lyle McGuire filed a priority unsecured proof of claim in the amount of $15,059.62 (claim no. 22-1), consisting of $3,044.77 in wages and $12,014.85 in vacation pay.

The trustee objects to the proof of claim, disputing the classification of the claim, asking the court to reclassify $11,374.21 of the vacation pay as a general unsecured claim.

The wages clearly fit under 11 U.S.C. § 507(a)(4), which provides for priority classification of:

"*allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

The wages appear to have been incurred in March or earliest February 2012, whereas the debtor filed this case on April 30, 2012. The debtor ceased operating in or about March 2012.

According to the attachment to the proof of claim, the $12,014.85 in vacation pay represents 153.8 hours of vacation pay. The debtor accrued vacation pay at the rate of 3.08 hours per pay period. With only 13 pay periods in 180 days, at $16 an hour, only $640.64 of the $12,014.85 in vacation pay could have been accrued during the 180-day period prescribed by section 507(a)(4).

The court will sustain the objection, reclassifying $11,374.21 of the vacation pay as a general unsecured claim. Only $3,685.41 ($640.64 + $3,044.77) will remain a priority claim.

17. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-26
VS. DAVE PAPINI — 3-24-16 [919]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On June 26, 2012, claimant Dave Papini filed a proof of claim in the amount of $25,516.22 (claim no. 26-1), $10,368.62 of which was classified as a priority claim, consisting of:

- $3,472.62 in wages,

- $6,696 for 93 hours of vacation pay,

- $200 for gas reimbursement,

- $1,147.60 for medical reimbursement, and

- $15,000 for a bonus.

POC 26-1.

The trustee objects to the proof of claim, disputing the classification of the entire priority amount, asking the court to classify the entire claim as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

Despite the itemization of the claim figure, the single page attachment to the proof of claim says nothing about the time periods represented by each itemized portion of the claim. As a result, the court cannot tell whether the claim falls within the 180-day period prescribed by section 507(a)(4). Accordingly, the objection will be sustained and the entire claim amount will be classified as a general unsecured claim.

18. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-27
VS. RONALD SLATE — 3-24-16 [909]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On July 5, 2012, claimant Ronald Slate filed a priority proof of claim in the amount of $41,406.24 (claim no. 35-1) under 11 U.S.C. §§ 507(a)(4) and (a)(5), including:

- $4,653.44 in wages, earned in March 2012, representing 88 hours at $52.88 an hour,

- $8,460.80 for 160 hours of vacation pay (at $52.88 an hour), the last 80 hours of which was earned from January 1, 2011 through December 31, 2011,

- $14,850 for a commission bonus earned on December 2, 2011,

- $704 as liquidated damages for violations of Cal. Labor Code § 1194.2,

- $423.04 a day as penalties,

- $598.48 for unreimbursed expenses for February and March 2012.

POC 35-1.

The trustee objects to the proof of claim, disputing the classification of the claim amount, asking the court to classify the claim except for $11,725 as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4) and (5), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*

". . .

"*(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan--*

"*(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only*

"*(B) for each such plan, to the extent of--*

"*(i) the number of employees covered by each such plan multiplied by $12,8501; less*

"*(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.*"

Initially, the court sees nothing in the attachments to the proof of claim reflecting unpaid contributions to an employee benefit plan. To the extent the proof of claim asserts such basis for any portion of the claim, the proof of claim will be disallowed.

Further, based on this case's filing date of April 30, 2012 - as the court has no evidence when the debtor ceased doing business, the court calculates the 180 days for section 507(a)(4) purposes to have started on November 2, 2011.

The claimant's $14,850 bonus falls within this 180-day period. It was earned on December 2, 2011.

As the bonus exceeds the $11,725 cap of section 507(a)(4), the court does not need to address the other items outlined in the attachments to the proof of claim.

The court will reclassify the claim as a general unsecured claim except for

$11,725, which will remain classified as priority. The objection will be sustained.

19. 15-26716-A-7 KENRO NAGAI — MOTION TO COMPEL ABANDONMENT 4-1-16 [18]
SLH-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Orangevale, California.

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

The debtor has produced evidence that the property has a value of $242,000. Docket 20. The property is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount of $60,000. The debtor has exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730(a)(3).

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $19,360 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

20. 14-29519-A-7 CHARLES BORNCAMP — MOTION TO AVOID JUDICIAL LIEN 3-28-16 [50]
RM-5
VS. UNIFUND CCR, L.L.C.

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

The motion will be granted.

A judgment was entered against the debtor in favor of Unifund CCR, LLC 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 motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $340,000 as of the petition date. Docket 50. 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 50 & 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 50 & 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).

21. 16-21125-A-7 MARCOS/MISTY RINCON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 3-31-16 [10]
FIRST TECH FEDERAL CREDIT UNION 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, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to an already repossessed 2013 Chevrolet Malibu. The movant has produced evidence that the vehicle has a value of $13,650 and its secured claim is approximately $24,656. Docket 12.

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 April 7, 2016. And, the vehicle is in possession of the movant already.

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

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

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

22. 14-20431-A-7 JENNIFER MILLS — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1
WILMINGTON SAVINGS FUND SOCIETY, FSB VS. — 3-29-16 [101]

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, Wilmington Savings Fund Society, FSB, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on June 3, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $625,000 and it is encumbered by claims totaling approximately $637,970. The movant's deed is the only mortgage against the property and secures a claim of approximately $631,733.

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

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

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.

23. 16-20837-A-7 JAMES BARRETT — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1
U.S. BANK, N.A. VS. — 4-5-16 [13]

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

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 and the movant's claim of $136,021 secured by the property is also not listed in the debtor's schedules.

The debtor's Schedule A does not list ownership interest in a real property. Schedule D does not list the movant's claim either.

Yet, the original borrower under the loan held by the movant, Caulette Jones, transferred the property to the debtor and herself on September 28, 2015. The debtor filed this case on February 16, 2016.

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 transfer of the property to the debtor, given that the property has been on the verge of foreclosure for while now, and given the trustee's non-opposition to the motion.

The transfer of the property to the debtor is questionable as it was done without the movant's consent and it was done one week after Jamal Shehadeh - to whom Ms. Jones also had transferred partial interest in the property - filed for bankruptcy.

Ms. Jones transferred the property to Mr. Shehadeh and herself on March 15, 2015. Mr. Shehadeh filed a chapter 7 bankruptcy case in this district on September 21, 2015 (Case No. 15-27375). On September 28, a week later, Ms. Jones transferred the property to the subject debtor and herself. Mr. Shehadeh's case was dismissed on December 14, 2015, due to his failure to pay the filing fee. Case No. 15-27375, Dockets 16 & 27.

Payments on account of the movant's loan have not been made since October 2013. Docket 15 at 4.

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 movant has proffered no evidence of value for the property.

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

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.*"

Both transfers of interest in the property by Ms. Jones were done without the movant's consent and the grantee in each case, aside from Ms. Jones, filed for bankruptcy within few months after the transfers.

From the totality of the foregoing, the court infers that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, involving transfer of all or part ownership of the real property without the consent of the movant and involving multiple bankruptcy filings. Accordingly, the court will grant relief under section 362(d)(4).

24. 10-49842-A-7 DANIEL/SUSAN KAESTNER — MOTION TO EMPLOY
SCB-2 — 4-11-16 [32]

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 seeks approval to employ The Miller Firm, LLC and Armstrong & Guy Law Offices, L.L.C., as special counsel for the estate to continue to prosecute a products liability action based on a pre-petition claim, which the debtors omitted to list in their schedules. The proposed attorneys have been prosecuting the action since July 2012.

This case was filed on November 11, 2010, the debtors received their discharge on February 28, 2011 and the case was closed on March 4, 2011. Pursuant to a motion by the U.S. Trustee, the court reopened the case on March 7, 2016 and the trustee filed a notice of assets on March 14, 2016.

The estate seeks to employ the attorneys on a 40% contingency fee basis, based on any gross recovery. The two law firms will split the fees evenly. They will be entitled to reimbursement of advanced legal expenses as well.

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

The court concludes that the terms of employment and compensation are reasonable. The law firms are disinterested persons within the meaning of 11 U.S.C. § 327(a) and do not hold an interest adverse to the estate. Accordingly, the motion will be granted.

25. 16-20148-A-7 WAYNE MASON — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 4-8-16 [16]
SETERUS, INC. VS.

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

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

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Lovelock, Nevada.

Given the entry of the debtor's discharge on April 28, 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. The property has a value of $160,000 and it is encumbered by claims totaling approximately $165,169. The movant's deed is in first priority position and secures a claim of approximately $133,894.

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

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

26. 15-23173-A-7 MAY LEE
HCS-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-7-16 [51]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,662.50 in fees and $61.24 in expenses, for a total of $3,723.74. This motion covers the period from July 28, 2015 through the present. The court approved the movant's employment as the trustee's attorney on August 11, 2015. In performing its services, the movant charged hourly rates of $90, $175, $225, $275, $325 and $345.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with an analysis and a stipulation pertaining to exemption claims, (2) advising the trustee about a previously unscheduled asset, (3) recovering the net proceeds from a grievance settlement by the debtor, and (4) 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.

27. 14-21184-A-7 SIMON RAMSUBHAG
14-2349
FUKUSHIMA V. SAHADEO ET AL

CONTINUED ORDER TO APPEAR FOR EXAMINATION (RAY SAHADEO)
11-13-15 [32]

Final Ruling: The judgment debtor has paid the judgment in full and the court will discharge the order to appear. Docket 55. The respondent shall not have to appear at the May 9 hearing.

28. 14-21184-A-7 SIMON RAMSUBHAG
14-2349
FUKUSHIMA V. SAHADEO ET AL

CONTINUED ORDER TO SHOW CAUSE]
1-29-16 [38]

Final Ruling: The judgment debtor has paid the judgment in full and the court will discharge the order to show cause. Docket 55. The respondent shall not have to appear at the May 9 hearing.

29. 15-25585-A-7 MATTHEW WATERS
ADS-1
VS. NEWPORT CAPITAL RECOVERY GROUP

MOTION TO
AVOID JUDICIAL LIEN
3-30-16 [42]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

30. 16-21390-A-7 JAGWINDER SIDHU
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-29-16 [9]

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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2015 Dodge RAM 2500 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 March 7, 2016 and a meeting of creditors was first convened on April 13, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 6. The debtor filed a statement of intention on the petition date, but did not list the vehicle in the statement.

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 failed to list the vehicle in the statement. 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 April 6, 2016, 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 April 13, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 6, 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.

31. 16-21591-A-7 MONICA DELGADILLO — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 4-7-16 [12]
AMERICAN HONDA FINANCE CORP. 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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2015 Honda Civic. The movant has produced evidence that the vehicle has a value of $13,775 and its secured claim is approximately $21,374. Docket 16.

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 April 21, 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.

32. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
DVD-2
VS. CAPITAL ONE BANK (USA)
4-5-16 [74]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer or Manager." Docket 78. 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").

Also, while the debtor served Capital One's counsel, unless the attorney 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).

33. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
DVD-3
VS. COUNTY OF SAN JOAQUIN, REVENUE AND RECOVERY
4-5-16 [79]

Final Ruling: The motion will be dismissed without prejudice because it was not served properly on the respondent creditor, County of San Joaquin, as prescribed by Fed. R. Bankr. P. 7004(b)(6), which requires service "[u]pon a state or municipal corporation or other governmental organization thereof

subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof."

Cal. Civ. Proc. Code § 416.50 prescribes that:

"(a) A summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

(b) As used in this section, 'public entity' includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."

Here, the motion was not served on the clerk, secretary, president, presiding officer, or other head of the County. It was served on County of San Joaquin without addressing service to anyone enumerated in Cal. Civ. Proc. Code § 416.50(a) in particular. Docket 83.