UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 11, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 1, 2, 3, 4, 7, 8, 9, 13 and 14.

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions or objects to the tentative ruling. If you wish to oppose the motion or otherwise be heard, please so advise Judge McManus. Please do not identify yourself or explain the nature of your opposition. If anyone wishes to be heard, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion or object to the proposed 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 JULY 16, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 2, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 9, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS.

INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

<u>ORDERS:</u> 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. 18-22816-A-7 ROGELIO FLORES
BPC-1
THE GOLDEN 1 CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-22-18 [9]

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

The motion will be granted.

The movant, Golden One Credit Union, seeks relief from the automatic stay with respect to a 2013 Ford Mustang. The movant has produced evidence that the vehicle has a value of approximately $22,478 and its secured claim is approximately $30,343. 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. 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.

2. 13-23517-A-7 TRACY GATEWAY, L.L.C.
ASF-7

MOTION FOR
ADMINISTRATIVE EXPENSES
5-22-18 [290]

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 seeks allowance of payments of post-petition estate income tax liability for the 2017 and 2018 (estimated) tax years as follows: $11,790 to the California Franchise Tax Board.

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

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

This case was filed on March 15, 2013. The tax liability in question was incurred in 2017 and 2018. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

3. 13-23517-A-7 ASF-7 — TRACY GATEWAY, L.L.C. — MOTION FOR ADMINISTRATIVE EXPENSES 4-27-18 [285]

Tentative Ruling: This motion will be dismissed as duplicative. The same motion was filed twice.

4. 17-27321-A-7 HSM-5 — CANTECA FOODS, INC. — MOTION FOR ADMINISTRATIVE EXPENSES 5-17-18 [109]

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 seeks authority to pay Fall River Brewing Company, the debtor's pre-petition landlord for real property in Redding, California, $3,000 for the estate's use of the property post-petition, from November 3, 2017 through May 2, 2018. The estate stored assets at the property, including many vehicles, all of which have been now administered by the trustee.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

This case was filed on November 3, 2017. The estate occupied the property post-petition then, from the petition date until May 2, 2018.

Fall River's services were actual and necessary in preserving the estate because the storage and safeguarding of the vehicles enabled the estate to

assess their value and sell the vehicles with value to the estate, generating proceeds for the benefit of the creditors. As such, the rent claim is an actual and necessary expense for preserving the estate. Accordingly, the motion will be granted.

5. 18-22921-A-7 CLEAN THE SERIES L.L.C. MOTION FOR
ETW-1 RELIEF FROM AUTOMATIC STAY
USAM 1 FUND, L.L.C. VS. 5-25-18 [16]

Tentative Ruling: The motion will be denied without prejudice.

The movant, USAM 1 FUND, L.L.C., seeks relief from the automatic stay as to real property in Vallejo, California.

11 U.S.C. § 362(g) provides that:

"*In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—*

"*(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property . . . .*"

The motion will be denied. The movant has offered no evidence on the value of the property and thus there is no evidence that the debtor/estate lacks equity in the property. The motion merely asserts that "[m]ovant believes there are other liens on the property junior to Movant's lien and that the value of the property is such that there is no equity in the property at all." Docket 16 at 3. What the movant believes is not proof. The movant's supporting declaration states no opinion of the property's. See Docket 18.

Finally, the court cannot tell whether the debtor's failure to make payments to the movant has any relevance to the disposition of this motion. Because there is evidence of value, it is not possible to gauge both equity and the movant's adequate protection.

In the event there is equity in the property, the equity cushion may be sufficient to adequately protect the movant's interest in the property until the debtor's case is closed. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law as to the debtor's interest in it. Thus, relief from stay under section 362(d)(1) would not be appropriate under those circumstances.

The motion will be denied.

6. 09-44733-A-7 ROBERT WIEMER MOTION TO
HCS-3 SELL
5-14-18 [252]

Tentative Ruling: The motion will be denied.

The chapter 7 trustee seeks to sell "as is" "with no warranty or representation" for $12,000, to Denise Rubino, the estate's interest in:

(1) Atlas S.A.R., L.L.C., a New Mexico limited liability company,

(2) the assets owned by Atlas, including, without limitation, lots 11 and 12 in the Industrial Town Subdivision of Bernalillo, New Mexico (Sandoval County),

(3) lot 4 of Lands of Refugio Navarro, M.R.G.C.D. Map 11, Bernalillo, New Mexico Sandoval County),

(4) the contents of a safe, and

(5) firearms.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for a good faith finding under 11 U.S.C. § 363(m). Under the purchase and sale agreement, the buyer is releasing the estate from any claims relating to the assets, including granting a Cal. Civ. Code § 1542 waiver.

The sale is subject to this court finding that:

1) the assets being sold are property of the estate; and

2) the sale of the interest in Atlas S.A.R. is free and clear of any and all claims or interests other than (i) fully perfected security interests, and (ii) any debts, liabilities, or claims to the extent that they are asserted as charges against the [a]ssets or were incurred by or arose against the [a]ssets by operation of law or any acts, omission, or inaction of the debtor or the [t]rustee prior to the transfer of the [a]ssets to [the] [b]uyer . . . pursuant to 11 U.S.C. Section 363(f);" (Docket 252 at 5), and

3) the sales price is not encumbered by any claim of anyone.

The first and second conditions are demanded by the buyer and the third by the trustees.

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

The motion will be denied for several reasons.

First, the court does not have an itemization and description of the items in the safe. See Docket 252. Nor does the motion say why the trustee cannot provide such itemization and description. Id. What if the safe contains jewelry with a value of far in excess of the $12,000?

Second, the trustee is selling firearms (plural), without itemizing or describing the firearms.

Third, there is no effort in the motion to value the items being sold.

Fourth, the court will not approve a sale under 11 U.S.C. § 363(f), when the motion does not identify specific encumbrances against the assets being sold. Sales under section 363(f) are free and clear of specific liens. Without knowing of the encumbrances implicating section 363(f), the court cannot do an analysis under section 363(f).

7. 17-23853-A-7 ELIZABETH SETTLES — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
GEL-3 — 5-17-18 [119]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the former chapter 11 debtor's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the chapter 7 trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final

hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part.

The Law Offices of Gabriel Liberman, counsel for the debtor during the chapter 11 portion of the case, has filed a first and final motion for approval of compensation. The requested compensation consists of $4,750 in fees and $68.52 in expenses, for a total of $4,818.52. The services cover the period from August 17, 2017 through September 11, 2017. The court has not approved the movant's employment as the debtor's chapter 11 attorney, even though the movant filed an employment motion with the court on August 21, 2017. Dockets 33-36. In performing services, the movant charged an hourly rate of $250.

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) advising the debtor about issues raised at the IDI and meeting of creditors, (2) reviewing and analyzing relief from stay motions as to the debtor's real properties, (3) negotiating a sale of the debtor's veterinary practice, (4) preparing and prosecuting a motion for conversion to chapter 7, and (5) preparing and prosecuting employment and compensation motions.

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

Given the secondary priority of chapter 11 administrative expenses in cases converted to chapter 7, the court will authorize payment of the compensation subject to the chapter 7 trustee's determination that the estate is administratively solvent.

8. 17-23853-A-7 ELIZABETH SETTLES — MOTION TO APPROVE COMPROMISE
HSM-5 — 5-2-18 [114]

Tentative Ruling: The motion will be granted.

The trustee seeks approval of a sale and settlement agreement with the debtor Elizabeth Settles. The agreement resolves all the disputes related to the trustee's objection to the debtor's claim of a homestead exemption as to real property located at 4677 Drayton Harbor Road in Blaine, Washington. See docket 112.

The debtor has agreed to purchase the property from the trustee and to refrain from claiming any further exemptions in the property in exchange for resolution of the exemption to dispute subject to court approval.

After some settlement negotiations, the parties have agreed to enter into the subject agreement.

The sale is "as is," "where is" and "with all faults." The proposed purchase price is $35,000. The sale is subject to any and all liens and encumbrances, and subject to any claims of exemption by the debtor. The debtor is to pay taxes and any known or unknown claim of liability. In the event the debtor

defaults on closing the sale, the trustee shall be entitled to liquidated damages in the amount of the agreed purchase price.

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

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 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 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.

As the proposed sale will generate some funds for distribution to creditors, will avoid the further costs of a public auction of the tangible assets, and will cut short the expenses the estate is incurring in litigating any claims, sale of the asset is in the best interest of the creditors and the estate. Accordingly, the sale will be approved under 11 U.S.C. § 363(b).

In addition, the court will waive the 14-day period of Fed. R. Bankr. P. 6004(h) and will make a good faith finding under 11 U.S.C. § 363(m) with respect to Mr. Williams.

Assuming the asset sells to the debtor, the court will approve the agreement also as a compromise.

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake, given that the trustee is concerned that marketing the property for general sale might result in lower proceeds, and given the inherent costs, risks, delay and inconvenience of further litigation, the subject agreement 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.

9.	18-20955-A-7 HCS-3	NATIONAL COUNCIL ON ALCOHOLISM AND DRUG	MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 5-23-18 [27]

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 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 moves the court to approve a rejection of an unexpired nonresidential real property lease, of 1440 Ethan Way, Suite 101, Sacramento, California 95825, with Ethan Conrad Properties Inc. The lease is due to expire in June 2027. The trustee has determined that the lease is of inconsequential value to the estate. The debtor has terminated its business operations at the premises and the estate has no use for the premises.

11 U.S.C. § 365(a) allows a trustee to assume or reject any executory contract or unexpired lease of the debtor. Otherwise, an unexpired nonresidential real property lease "shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of- (I) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan." 11 U.S.C. § 365(d)(4)(A).

This case was filed on February 20, 2018. Given that the trustee has determined that the lease is not beneficial to the estate, the court concludes that rejection of the lease is in the best interest of the estate. Accordingly, the motion will be granted.

10. 87-20156-A-7 DALE/ANNA ATKINS — MOTION TO SELL
87-2153 BRK-2 — 1-12-17 [46]
FIBERGLASS REPRESENTATIVES ET AL V. ATKINS

Tentative Ruling: The hearing on the plaintiff's application to sell will be continued for further briefing.

The court entered an order on May 16, 2018, setting a further hearing on creditor and plaintiff James Barrett's January 12, 2017 application for sale, upon inquiry from the U.S. Marshal on how to administer a sale of 100% interest in the real property of Dale Atkins. Dockets 156 and 46.

The court issued a nondischargeable money judgment against the defendant Anna Atkins. After entry of the judgment, the defendant died. Upon her death, the defendant's undivided interest in the real property, located at 518 Catalina Circle, Vallejo, California, passed to Dale Atkins. The plaintiff then sought an order authorizing the sale of the property in order to satisfy the judgment.

On June 20, 2017, the court entered an order authorizing a sale to enforce the plaintiff's judgment. Docket 137.

The U.S. Marshal was instructed by the plaintiff to conduct a sale of 100% interest in the real property of Dale Atkins. The Marshal reports that there were no bidders at the sale other than the plaintiff, who credit bid $100,000. Because a credit bid does not permit payment of anything to Mr. Atkins, the Marshal believes the sale may not satisfy the terms of the sale order and so the Marshal has requested further instructions before concluding any sale.

The court will amend its order directing sale, clarifying that the plaintiff may levy only against Mrs. Atkins' interest in the property. A judicial sale of 100% of the property is improper given that the other co-owner's interest is not subject to the rights of the judgment creditor. Only a sale of Mrs. Atkins' interest in the property, as of the date of her death, will be allowed.

However, because Mr. Atkins is entitled to all of the appreciation since his wife's death, it is not simply a matter of authorizing a sale of Mrs. Atkins 50% interest. The court must first determine the property's value at the time

of her death. For example, when Mrs. Atkins died in 2013, assuming a value of $268,000 and encumbrances of $66,643, her interest in the property today would be calculated as follows: $268,000 (value as of Mrs. Atkins' death) - $66,643 (encumbrances as of Mrs. Atkins' death) = $201,357/2 (representing 50% ownership interest as of her death) = $100,678.50. This sum then must be divided by the present value of the property and multiplied by 100 to arrive at the percentage share against which the plaintiff may levy at this time.

Whoever purchases Mrs. Atkins' undivided interest in the property, calculated as indicated above, the purchaser then may seek to partition the property consistent with applicable California law.

After determining Mrs. Atkins' present share of the property, the court will amend the order authorizing a sale in accordance with this ruling.

11. 16-26561-A-7 PHONG TIEN — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. REAL TIME RESOLUTIONS, INC. — 5-3-18 [45]

Tentative Ruling: The motion will be granted in part.

A judgment was entered against the debtor in favor of Real Time Resolutions, Inc. for the sum of $211,257.19 on November 17, 2011. The abstract of judgment was recorded with Sacramento County on March 13, 2012. That lien attached to the debtor's 25% interest in a residential real property in Elk Grove, California.

The motion will be granted in part pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $395,000 as of the petition date. Dockets 45, 47, 48. The unavoidable liens totaled $359,162.30 on that same date, consisting of a single mortgage in favor of HSBC, U.S.A. Dockets 1, 37, 45. The equity in the property totals $35,837.70 ($395,000 - $359,162.30). The debtor's 25% interest in the property amounts to $8,959.42 ($35,837.70/4).

While the motion claims that the debtor exempted $8,960 of the property's value (Docket 47), the debtor has exempted pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) only $1.00 in the property. This is so in both Schedule C and Amended Schedule C. Dockets 1 & 36.

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 $8,958.42 of equity to support the judicial lien ($8,959.42 equity - $1.00 exemption). Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of $1.00 and its fixing to the extent of $1.00 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

12. 18-20274-A-7 ALEXANDRIA O'GARA — MOTION TO CONVERT CASE
PGM-1 — 5-4-18 [25]

Tentative Ruling: The motion will be denied.

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).

The court has reviewed the record and concludes that the debtor is not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). The debtor is seeking conversion to retain her home, which is otherwise likely to be liquidated in the chapter 7 proceeding.

The debtor has produced evidence that she has $400 in regular monthly net income. Dockets 27 & 28. The income appears to be regular as it is generated from rental income and monthly contributions from the debtor's son. Id.

However, the motion includes no evidence that the debtor is under the chapter 13 debt limits set by 11 U.S.C. § 109(e).

13. 18-22477-A-7 CECILIA GOMEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
WAJ-1 — 5-25-18 [19]
JOHN HAYDEN VS.

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

The motion will be granted.

The movant, John Hayden, seeks relief from the automatic stay as to real property in Carmichael, California. The movant is the legal owner of the property. On March 6, 2018, the movant gave the debtor a 3-day notice to vacate the property. On March 21, 2018, the movant filed an unlawful detainer action in state court. The debtor filed this case on April 24, 2018.

The movant seeks relief from stay to proceed with the unlawful detainer action to obtain a judgment for possession of the property.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the monthly rent. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on her pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

If the movant prevails, no monetary claim may be collected from the debtor.

The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.
No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

To the extent it applies, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

14. 16-24184-A-7 MA CRISTINA APIADO — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-5 — 5-18-18 [61]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,175.00 in fees and $390.86 in expenses, for a total of $9,565.86. This motion covers the period from October 9, 2017 through May 17, 2018. The court approved the movant's employment as the trustee's attorney on October 23, 2017. In performing its services, the movant charged hourly rates of $50, $100, $175, and $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing the 2004 examination and subpoenas of the debtor's non-filing spouse, (2) investigating potential sale of real property and preparing related settlement agreement, and (3) 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.

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

15. 18-23332-A-7 DEMETRI/MELISSA JAVIER — MOTION TO COMPEL ABANDONMENT O.S.T.
MB-1 — 6-7-18 [13]

Tentative Ruling: The motion will be granted as provided in the ruling below.

The debtors request an order compelling the trustee to abandon the estate's interest in their sole proprietorship day care business, "My Little Tots Child Care."

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

According to the motion, the business assets include, as the motion references Schedule B, "[h]igh chairs, children's toys." Dockets 1 & 16. The assets have a value of $1,000 and have been claimed fully exempt in Schedule C under Cal. Civ. Proc. Code § 703.140(b)(5). Dockets 1 & 16. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

16. 16-27255-A-7 LAWRENCE/KATE WARD — MOTION TO DISMISS CASE
SKS-1 — 4-26-18 [48]

Tentative Ruling: The motion will be conditionally denied. Due to the debtors' hospitalizations, they were unable to attend the meeting of creditors. The trustee shall schedule a new meeting. If the debtors fail to appear personally, or fail to make arrangements to appear telephonically or by other means, the case will be dismissed on the trustee's ex parte application.

Because the April 25 meeting was continued to June 13, the court will order that the deadlines for filing complaints under 11 U.S.C. §§ 523 and 727 and motions to dismiss under 11 U.S.C. § 707 be extended to August 11.

FINAL RULINGS BEGIN HERE

17. 16-23709-A-7 DINA NORTHCUTT — MOTION TO APPROVE COMPROMISE
DNL-7 — 5-10-18 [54]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the 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 of a compromise between the estate and Bayer AG, Bayer Corporation, Bayer, Inc., and/or Bayer Pharmaceutical Division, resolving the estate's interest in claims against Bayer for personal injuries sustained by the debtor from the ingestion of a drug manufactured by Bayer.

Under the terms of the compromise, the defendants will pay $164,500 to the estate. Under a court-approved stipulation with the debtor, the settlement proceeds will be distributed as follows: first, to cover allowed medical and other liens against the settlement proceeds; second, to cover court-approved special counsel fees and costs; third, the estate will receive $23,000; and fourth, the debtor will receive the remainder of the settlement proceeds.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the estate's share of the settlement proceeds is fixed regardless of settlement amount, given that the debtor scheduled the value of the claims against Bayer at $250,000 of which the settlement amount is approximately 66%, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

18. 18-20310-A-7 DEAN KARADUNIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 5-1-18 [26]
WELLS FARGO BANK, N.A. VS.

Final Ruling: This motion for relief from the automatic stay has been set for

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2012 Honda Civic vehicle.

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

The petition here was filed on January 19, 2018 and a meeting of creditors was first convened on February 13, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than February 13. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on March 15, 2018, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on March 19, 2018, indicating an intent not to administer the vehicle or any other

assets.

Therefore, without this motion being filed, the automatic stay terminated on March 15, 2018.

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.

19. 18-21513-A-7 JOAN KAUFMAN — ORDER TO SHOW CAUSE 5-15-18 [45]

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

This order to show cause was issued because the debtor filed an Amended Schedule A/B, C, D, E/F, and H on May 1, 2018, but did not pay the $31 filing fee. However, the debtor paid the fee on May 17, 2018. No prejudice has resulted from the delay.

20. 18-21936-A-7 JUSTIN WATSON
MEL-1
BANK OF AMERICA, N.A. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-11-18 [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, Bank of America, seeks relief from the automatic stay with respect to a 2015 Jeep Renegade. The movant has produced evidence that the vehicle has a value of $15,340 and its secured claim is approximately $22,999.

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 May 10, 2018. 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.

21. 13-31341-A-7 ROBERT/DOLORES KYLE — MOTION TO AVOID JUDICIAL LIEN
BB-3
VS. BUTTE COUNTY CREDIT BUREAU, INC., ET AL
4-9-18 [29]

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

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

Further, the movant has provided only 27 days' notice of the hearing on this motion. Docket 35. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 30. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

22. 18-21544-A-7 STANLEY LECORNO — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
FORD MOTOR CREDIT COMPANY, L.L.C. VS.
5-8-18 [28]

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

and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay with respect to a 2016 Ford Focus. The movant has produced evidence that the vehicle has a value of $12,900 and its secured claim is approximately $20,398. Dockets 30 & 31.

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 18, 2018. 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.

23. 18-22848-A-7 CHERIE/LAWRENCE CARPENTER — MOTION TO DISMISS DUPLICATE CASE 5-8-18 [5]
BLC-1

Final Ruling: The motion will be dismissed without prejudice because there is no proof of service indicating that the motion was served on anyone.

The motion is also not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(7), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4)."

24. 18-23252-A-7 GENE/JULIE HASKINS — MOTION TO COMPEL ABANDONMENT 5-25-18 [6]
CK-1

Final Ruling: The motion will be dismissed without prejudice because there is no evidence that the motion was served on anyone. The proof of service accompanying the motion does not attach the referenced service matrix. See Docket 9.

25. 18-20956-A-7 JOHN/CAROLYN HANNESSON — OBJECTION TO REPORT OF NO DISTRIBUTION 4-23-18 [56]
SLH-2

Final Ruling: The objection will be dismissed as moot.

Creditor Arnold Wolf objects to the trustee's no asset report, referencing assets the debtors transferred into a trust.

The objection will be dismissed as moot because, after it was filed, the trustee filed a notice of assets, on May 4. The court deems this to be a voluntary dismissal of the no asset report.

26. 18-20461-A-7 RAM KUAR AND SHIU NATH — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-24-18 [70]
NLL-2
WELLS FARGO BANK, N.A. VS.

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

The motion will be granted.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay as to real property in Sacramento, California, under 11 U.S.C. § 362(d)(1) and (d)(4). The property has a value of $430,000 and it is encumbered by claims totaling approximately $374,000. The movant's deed is in first priority position and secures a claim of approximately $282,182.

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.*"

This is the debtor's third bankruptcy case since January, 2017, involving the subject property. In the prior cases, the debtor owned the subject property. The movant has been attempting to sell the property at a tax sale since at least January 2017.

Shiu Nath filed a previous bankruptcy petition, Case Number 17-20515, in January, 2017, and the case was dismissed for failure to pay the filing fee. The debtors then filed a chapter 13 case in May, 2017, which was dismissed for failure to file a plan. On January 29, 2018, the debtors filed a chapter 13 case, Case No. 18-20461. That case was converted to chapter 7 on April 9, 2018. The movant had been granted relief from stay as to the property under 11 U.S.C. § 362(d)(4) prior to the case conversion.

Due to the debtors' repeated filings, no automatic stay went into effect upon the filing of this case, and the debtors have not filed a motion to impose the stay. The movant acknowledges that the stay is not applicable to the movant; however, the movant seeks additional in rem relief under 11 U.S.C. § 362(d)(4). Specifically, the movant requests (1) an order for relief from stay that is binding and effective in any potential future bankruptcy case filed by the debtors in the next two years, and (2) waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

The above history of case filings, case dismissals and transfers of the property establish a scheme by the debtors to delay, hinder or defraud the movant in the enforcement of its claim against the property.

The filing of this case then was part of a scheme to delay, hinder, or defraud creditors, involving multiple bankruptcy filings. Accordingly, relief under section 362(d)(4) is warranted. Although the stay is in not in effect

The court will grant in rem relief from stay under section 362(d)(4), which would in turn trigger the section 362(b)(20) exception to the automatic stay. Properly recorded, the order shall be binding in any other case under this title purporting to affect the subject property, filed no later than two years after entry of the order. See 11 U.S.C. § 362(d)(4).

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.

To the extent it applies, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

27. 17-22588-A-7 JAY/SUZANNE DYER — MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
KJH-3 — 5-10-18 [82]

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 chapter 7 trustee, Kimberly Husted, has filed her first and final motion for approval of compensation. The requested compensation consists of $8,429.21 in fees and $4,603.98 in expenses (of which $4,547.50 was already approved by the court in an order approving the sale of real property (docket 57)), for a total of $13,033.19. The services for the sought compensation were provided from April 19, 2017 through the present.

The court is satisfied that the requested compensation does not exceed the cap set by 11 U.S.C. § 326(a).

The movant will make or has made $103,584.20 in distributions to creditors. This means that under the cap ,the movant's compensation is $16,996.39 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $2,679.21 (5% of the next $950,000).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) employing professionals to assist the estate in the administration of estate assets, (4) selling real property of the estate, (5) addressing numerous sales issues, such as reviewing offers, title reports, insurance information and communicating with the estate's realtor, (6) communicating with the estate's counsel and accountant about various issues, (7) reviewing and analyzing claims, (8) addressing tax issues, (9) preparing final report, and (10) preparing compensation motion.

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

28. 16-27489-A-7 PALMER COOKE
SCB-7

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-26-18 [156]

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.

Schneweis-Coe & Bakken, LLP, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $11,745.00 in fees (reduced from $13,215.00)and $613.26 in expenses, for a total of $12,358.26. This motion covers the period from August 4, 2017 through April 23, 2018. The court approved the movant's employment as the trustee's attorney on August 17, 2017. In performing its services, the movant charged hourly rates of $150 and $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing stipulations to extend the deadlines to object to exemptions and object to discharge, (2) securing employment of realtor and sale of real property, (3) negotiating the post-sale turnover of death certificate of joint tenant, (4) advising the trustee about the disposition of other estate assets, and (5) 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.

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

29. 18-20595-A-7 SALMA LUSSY — MOTION TO AVOID JUDICIAL LIEN
HSM-1
VS. RAY RANCIATO — 5-14-18 [16]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Ray Ranciato, in accordance with Fed. R. Bankr. P. 7004(b)(1), which requires service "*[u]pon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.*" See also Fed. R. Bankr. P. 9014(b) (providing that a motion must be served in the manner provided for service of a summons and a complaint). And, while the debtor served Mr. Ranciato's attorney, 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).

30. 18-20898-A-7 PAUL/KEREI GALINDO — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD-1
CONSUMER PORTFOLIO SERVICES, INC. VS. — 5-11-18 [19]

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.

Movant Consumer Portfolio Services, Inc. seeks relief from the automatic stay with respect to a 2015 Toyota Prius Key. Given the entry of debtor's discharge on June 5, 2018, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to debtor.

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

Debtor has failed to make three pre-petition and three post-petition payments to movant and a review of the case docket indicates that the trustee has not made any efforts to sell the property. The court also notes that the trustee has filed no response to this motion. Based on this, the court finds cause for the granting of relief from stay. In addition, movant has submitted evidence that the Kelly Blue Book wholesale value of the vehicle is $17,288, whereas movant's claim secured by the vehicle totals $15,932. Hence, the court finds that there is no realizable equity in the vehicle, it is not necessary to a reorganization, and there is no likelihood the trustee can administer the vehicle for the benefit of creditors.

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.