UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 3, 2017 at 10:00 a.m.

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

1, 5, 6, 9, 19, 20

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 JULY 31, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 24, 2016. 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
HCS-11

MOTION TO APPROVE COMPENSATION OF REALTOR
6-5-17 [431]

Tentative Ruling: The motion will be denied without prejudice.

Ronald Nakano of Coldwell Banker Northern California, real estate broker for the trustee, has filed what appears to be a first interim motion for approval of compensation. The requested compensation consists of $2,600 in fees. The court approved the movant's employment as the trustee's real estate broker on April 26, 2017. The requested compensation is based on a $100 hourly rate for advisory services.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included review and analysis of value of various real properties.

The motion will be denied because the court has no evidence of when the subject services were performed. The court cannot tell from the motion whether the services were performed before or after the approval of the movant's employment. The time records do not reference dates for the tasks performed by the movant. Docket 435.

2. 17-21421-A-7 CHESTER STYGAR
EAT-1
NATIONSTAR MORTGAGE, L.L.C. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-1-17 [16]

Tentative Ruling: The motion will be granted in part.

The movant, Nationstar Mortgage, L.L.C., seeks relief from the automatic stay as to a real property in Redding, California (in the motion the property's location is identified as Cottonwood, California). Docket 20.

With respect to the debtor, the property has a value of $185,000 and it is encumbered by claims totaling approximately $151,573. The movant's deed is the only encumbrance against the property. This leaves approximately $33,426 of equity in the property.

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

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

The movant also has an equity cushion of approximately $33,426. This equity cushion is sufficient to adequately protect the movant's interest in the

property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after July 3, 2017. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee has filed a non-opposition to the motion. This is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period,

however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

3. 13-29339-A-7 RITA/CHARLES BOBINO — MOTION TO AVOID JUDICIAL LIEN
FF-2
VS. GREATER CA FINANCIAL SERVICES — 4-24-17 [51]

Tentative Ruling: The motion will be conditionally granted.

The court continued the hearing on this motion from May 22, in order for the debtor to serve the Amended Schedule C filed on April 20. The Amended Schedule C was served on June 1. Docket 65. Subject to there being no exemption objection filed prior to the 30-day deadline to object, the motion will be granted in accordance with the ruling below. See Fed. R. Bankr. P. 4003(b)(1).

A judgment was entered against both debtors in favor of Greater California Financial Services, Inc. for the sum of $17,195.94 on January 31, 2013. The abstract of judgment was recorded with Solano County on March 7, 2013. That lien attached to the debtor's interest in a residential real property in Vallejo, 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 $299,000 as of the petition date. Dockets 1, 49, 53. The unavoidable liens totaled $299,000 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 1 & 53. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Amended Schedule C. Dockets 49 & 53.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. 13-29339-A-7 RITA/CHARLES BOBINO — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. AMERICAN EXPRESS CENTURION BANK — 4-24-17 [56]

Tentative Ruling: The motion will be conditionally granted.

The court continued the hearing on this motion from May 22, in order for the debtor to supplement the record and serve the Amended Schedule C filed on April 20. The debtor has supplemented the record. Dockets 66 & 67. And, the Amended Schedule C was served on June 1. Docket 65. Subject to there being no exemption objection filed prior to the 30-day deadline to object, the motion will be granted in accordance with the ruling below. See Fed. R. Bankr. P. 4003(b)(1).

A judgment was entered against debtor Rita Bobino in favor of American Express Centurion Bank for the sum of $18,457.13 on December 2, 2009. The abstract of judgment was recorded with Solano County on August 24, 2010. That lien attached to the debtor's interest in a residential real property in Vallejo, 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 $299,000 as of the petition date.

Dockets 1, 49, 58. The unavoidable liens totaled $299,000 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 1 & 58. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Amended Schedule C. Dockets 49 & 58.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

5. 16-22654-A-7 MARC LIM — MOTION TO PAY O.S.T. 6-23-17 [166]
HSM-13

Tentative Ruling: The motion will be granted.

The chapter 7 trustee seeks permission under 11 U.S.C. §§ 363(b) and 503(b)(1) to utilize up to $9,500 of estate funds to address urgent issues pertaining to the security and condition of a real property in Elk Grove, California, to protect the estate's interest in that property by:

- insuring it,
- securing the fence for the property as part of it was destroyed,
- cleaning the pool on the property,
- repairing the pool pump and filtration system,
- fixing the HVAC system as it is currently non-operational,
- fixing the landscaping at the property as it has deteriorated,
- continuing landscaping maintenance pending sale of the property,
- cleaning the property,
- removing three floor-bolted safes in the garage,
- changing the locks of the doors on the property, and
- paying any outstanding utilities.

11 U.S.C. § 363(b) authorizes the trustee to use property of the estate other than in the ordinary course of business, including funds.

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.

Given the estate's needs to insure the property, secure it, make it habitable, and prepare it for sale, the court will authorize the proposed use of up to $9,500. The motion will be granted.

6. 16-22654-A-7 MARC LIM — MOTION TO ESTABLISH NOTICE AND ADMINISTRATIVE PROCEDURES O.S.T. 6-23-17 [171]
HSM-14

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

The trustee seeks an order limiting notice under Fed. R. Bankr. P. 2002(m), with respect to matters brought under Fed. R. Bankr. P. 2002(a)(2), (3), and (6), to:

- the U.S. Trustee,
- the chapter 7 trustee,
- the trustee's counsel,
- the debtor,
- the debtor's counsel,
- persons who have appeared and formally requested notice under Rule 2002,
- persons who have filed proofs of claim, at the address on the proof of claim,
- the IRS and other government agencies to the extent required by the Fed. R. Bankr. P. or Local Bankruptcy Rules, and
- any other party wishing to be included in this limited service list, after making such a request.

The trustee proposes to update the limited service list on monthly basis by filing a notice of updated service list with the court.

"The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules."

Fed. R. Bankr. P. 2002(m).

As currently there are over 300 parties entitled to notice under Fed. R. Bankr. P. 2002(a) and it costs much for all parties to be served, the court will limit notice to the parties requested. This should substantially alleviate the estate's financial burden of noticing motions under Rule 2002(a).

However, the court will require that all secured creditors be added to the limited service list. Also, the court sees no reason for the trustee to update the list on monthly basis, when anyone may file a request for special notice at any time. In other words, once this motion is granted, service should be made on all parties on the limited service list, plus anyone who requested special notice after the filing of this motion. The motion will be granted.

7. 16-22163-A-7 SYLVIA KINERSON — MOTION TO WITHDRAW AS ATTORNEY
LT-3 — 6-5-17 [75]

Tentative Ruling: The motion will be conditionally granted.

Attorney Lou Tovar asks for permission to withdraw as counsel for the debtor because the debtor wishes to represent herself. The movant claims that there are other grounds for the motion, but he prefers to provide them to the court in camera "given the sensitive nature of this case."

Local Bankruptcy Rule 2017-1(e) provides that *"Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."*

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No.

06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

"(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

"(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

"(B) Mandatory Withdrawal.

"A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

"(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

"(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

"(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

"(C) Permissive Withdrawal.

"If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

"(1) The client
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not

prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

"(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

"(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

"(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

"(5) The client knowingly and freely assents to termination of the employment; or

"(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

This case was filed on April 6, 2016. The debtor's discharge has not been entered yet because she is defending a section 727 complaint.

Although the movant claims that the debtor wishes to represent herself, the court is not fully convinced of this. The debtor's appearance in court at the last hearing held in this case, on June 19, left the court with the impression that the debtor does not wish to represent herself.

Given this, the court is prepared to permit withdrawal and grant the motion only upon the debtor appearing at the July 3 hearing on this motion and confirming that she wishes to represent herself.

Even though the movant claims other grounds for withdrawal, he has not provided evidence of them. While the court understands that the movant may be cautious not to divulge information that may be privileged, the court needs at least a general factual assertion that would support withdrawal.

And, assuming the debtor does not wish to represent herself, the motion says little or nothing about whether or to what extent the proposed withdrawal will prejudice her.

8. 17-21069-A-7 IRENA KASHUBSKA — MOTION TO AVOID JUDICIAL LIEN
PR-2
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 6-1-17 [40]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, L.L.C. for the sum of $1,985.66 on June 26, 2014. The abstract of judgment was recorded with Placer County on September 2, 2014. That lien attached to the debtor's interest in a residential real property in Roseville, California. The debtor is seeking avoidance of the lien under section 522(f).

The motion will be denied because the debtor has not scheduled the voluntary claim secured by the property. Although the supporting declaration states that there is a single mortgage against the property for $136,875 in favor of Wells Fargo Home Mortgage, Schedule D lists no such secured claim. Dockets 42 & 9.

The debtor's contention that she does not have to list the claim in Schedule D

because the debt is not in her name, but in the name of her former husband, makes no sense. She owns a 50% interest in a real property that is subject to the claim. Therefore, it is, by definition a claim in this case. See 11 U.S.C. § 506(a). The claim should have been listed in Schedule D, which asks for "any creditors hav[ing] claims secured by your property?" Docket 9. In other words, Schedule D is not concerned only with *in personam* claims. It is concerned with both *in personam* and *in rem* claims.

9. 17-22371-A-7 PAUL NGUYEN — MOTION TO EMPLOY
DNL-1 — 6-12-17 [19]

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

The motion will be granted.

The trustee requests approval to employ Desmond, Nolan, Livaich & Cunningham as counsel for the estate. DNLC will assist the estate with a sale agreement, and court approval of that agreement, pertaining to the estate's interest in non-exempt assets. The proposed compensation is a flat fee of $1,200, inclusive of all out-of-pocket costs. The movant also requests approval of payment of the compensation, without further order of the court.

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."

The court concludes that the terms of employment and compensation are reasonable. DNLC 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.

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

10. 17-22371-A-7 PAUL NGUYEN — MOTION TO SELL
DNL-2 — 6-12-17 [24]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell to the debtor for $6,232:

– the estate's 100% interest in a 2001 Honda Accord vehicle, with a scheduled value of $2,000;

– the estate's interest in a 2010 Honda Accord vehicle, with a scheduled value of $8,000, subject to a $3,060 exemption; and

– the estate's 27% interest in the debtor's 2017 tax refund, with an estimated value of $1,282.

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

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

11. 17-21574-A-7 DAINA SMITLEY — MOTION TO DISMISS 5-31-17 [15]

Tentative Ruling: The motion will be denied.

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on May 31, 2017.

The debtor responds that she missed the meeting because her attorney failed to calendar it. The attorney asks states that this was an oversight on his part.

The meeting has been continued to July 5, 2017 at 1:00 p.m. The court will not dismiss the case, given that this was an isolated oversight in calendaring the meeting.

However, because the meeting of creditors was continued to July 5, the court will order that the deadlines for filing complaints under section 727 and motions to dismiss under section 707 be extended by 60 days from the continued meeting date. The deadlines will be extended from July 5 to September 3.

12. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID JUDICIAL LIEN 6-1-17 [37]
HLG-1
VS. PERSOLVE, L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker in favor of Persolve, L.L.C. for the sum of $9,232.99 on September 3, 2015. The abstract of judgment was recorded with Sacramento County on February 2, 2016. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied for two reasons. First, the court has no admissible evidence of value for the property. In an effort to provide evidence of value for the property, the debtor states in her declaration only that "I placed an aggregate value of $258,075.00 on this asset at the time of filing." Docket 39.

This statement is hearsay. It refers to an out-of-court statement made by the

debtor at the time of the petition filing. The statement is proffered for the truth of the matter asserted therein. It is inadmissible hearsay. Fed. R. Evid. 801(c) and 802.

Second, in its calculation of the unavoidable liens, the motion does not take into account a lien for utilities in the amount of $1,055.43. Docket 36.

13. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID JUDICIAL LIEN
HLG-2
VS. TARGET NATIONAL BANK
6-2-17 [42]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker (the remaining debtor) in favor of Target National Bank for the sum of $3,648.65 on March 24, 2011. The abstract of judgment was recorded with Sacramento County on March 28, 2013. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied for two reasons. First, the court has no admissible evidence of value for the property. In an effort to provide evidence of value for the property, the debtor states in her declaration only that "I placed an aggregate value of $258,075.00 on this asset at the time of filing." Docket 44.

This statement is hearsay. It refers to an out-of-court statement made by the debtor at the time of the petition filing. The statement is proffered for the truth of the matter asserted therein. It is inadmissible hearsay. Fed. R. Evid. 801(c) and 802.

Second, in its calculation of the unavoidable liens, the motion does not take into account a lien for utilities in the amount of $1,055.43. Docket 36.

14. 16-23780-A-7 MATTHEW/LISA BAKER — MOTION TO AVOID LIEN
HLG-3
VS. UNIFUND CCR, LLC
6-2-17 [47]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor Lisa Baker (the remaining debtor) in favor of Unifund CCR, L.L.C. for the sum of $14,160.98 on March 11, 2013. The abstract of judgment was recorded with Sacramento County on February 3, 2014. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor is seeking avoidance of the lien under section 522(f)(1).

The motion will be denied for two reasons. First, the court has no admissible evidence of value for the property. In an effort to provide evidence of value for the property, the debtor states in her declaration only that "I placed an aggregate value of $258,075.00 on this asset at the time of filing." Docket 49.

This statement is hearsay. It refers to an out-of-court statement made by the debtor at the time of the petition filing. The statement is proffered for the truth of the matter asserted therein. It is inadmissible hearsay. Fed. R. Evid. 801(c) and 802.

Second, in its calculation of the unavoidable liens, the motion does not take into account a lien for utilities in the amount of $1,055.43. Docket 36.

15. 17-22481-A-7 WILLIAM LANDES — MOTION FOR RELIEF FROM AUTOMATIC STAY
BJB-1 — 6-5-17 [19]
MARIE LANDES VS.

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

The movant, Marie Landes, the estranged spouse of the debtor, seeks relief from stay to continue prosecution of a pending divorce action involving her and the debtor. As part of that action, the movant admits that she is seeking to recover outstanding spousal and child support from the debtor, by selling personal property she claims to be community property.

The trustee, the debtor, and Essex Bank oppose the motion in part.

According to the debtor, the pending divorce concerns spousal support, child support, visitation issues, termination of marriage, and property division.

As noted in the responses to the motion, 11 U.S.C. § 362(b)(2)(A)-(C) is clear that there is no automatic stay under section 362(a):

– for the establishment or modification of an order for domestic support obligations;

– concerning child custody or visitation;

– for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate;

– as to the collection of a domestic support obligation from property that is not property of the estate;

– with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute.

To the extent the motion seeks relief as to any of the foregoing, it will be dismissed as unnecessary.

The remainder of the motion, pertaining to the division of separate property of the debtor or community property of the debtor and the movant and the collection of any pre-petition obligation from property of the bankruptcy estate or any other pre-petition property, will be denied..

16. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO APPROVE REPAIRS TO RIO LINDA CENTER AND USE OF CASH COLLATERAL
FWP-29 — O.S.T.
6-23-17 [826]

Tentative Ruling: The motion will be granted.

The chapter 11 trustee in this case is asking the court for authority to execute a business plan to perform substantial abatement, repairs, and rebuilding at the estate’s Rio Linda shopping center, needed due to extraordinary damage caused by the release of water by the property’s fire

suppression sprinkler system. The damage at the property has been extensive, including, without limitation, floors, walls, refrigeration units, the property's basement, and internal office structures.

The property has been listed for sale at a price of $2.5 million. It is subject to a single lien in favor of the United States, in the approximate amount $1.295 million. The trustee, in consulting with his realtor, does not wish to rebuild the property to its pre-damaged condition, given that such rebuilding will limit the marketability of the property.

The trustee also seeks authority to use insurance proceeds on account of the damage, as cash collateral. He estimates that the estate will receive approximately $250,000 from the property's insurer.

The court will permit the trustee to execute the business plan to perform the necessary abatement, repairs, and rebuilding, with discretion on the extent to which to rebuild the property, given the necessity to maximize the property's marketability.

The court will also permit the trustee to utilize any insurance proceeds to execute the business plan, restoring the property to a marketable condition.

11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

Any insurance proceeds would be granted to and used by the estate solely for redressing the damage of the property. The United States cannot realize its interest in the property without redress of the damage and eventual sale of the property. In other words, use of the insurance proceeds will be necessary to provide adequate protection of the United States' interest in the property.

Moreover, the United States' approximately $1.295 million interest in the property is adequately protected by the value of the would-be-restored property. The trustee estimates that after restoration, the property will be listed for sale at $2.2 to $2.5 million. Thus, once it is restored, there will be approximately between $900,000 and $1.2 million of equity in the property. The motion will be granted.

17. 17-21995-A-7 JASVINDER CHAHAL
SCB-4

MOTION TO SELL
6-12-17 [62]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell the estate's encumbered interest in two storage tanks , a 2014 Polar tank, and a 2009 Beal tank, to Opperman & Son, Inc.

The sale of the 2014 Polar tank is for $80,000. This tank is subject to a claim held by PACCAR Financial Corp.

The sale of the 2009 Beal tank is for $65,000.

Both tanks are also subject to other encumbrances, including:

- an IRS lien for $501,288.62,
- an IRS lien for $103,109.34,
- a California Employment and Development Department lien for $30,343.73.

The motion will be denied for several reasons.

First, although the motion identifies various encumbrances against the property being sold, it does not unequivocally request approval of the sales free and clear of liens. See 11 U.S.C. § 363(f). The court cannot speculate that the movant is seeking a section 363(f) sale just because the motion identifies encumbrances.

Second, the motion is not clear about the extent of the PACCAR encumbrance on the 2014 tank. In one place, the motion says that the 2014 tank is encumbered by a $57,254.88 PACCAR lien. Docket 62 at 2 ¶ 2a. On the other hand, in paragraph 4 of the motion, the movant says that the PACCAR lien on the 2014 tank is $209,448.76.

The motion does not mention that the PACCAR debt of $209,448.76 represents three different claims: $57,254.88, $58,030.38, and $94,163.50. See Docket 19, Schedule D. As such, the court cannot tell whether one or all three PACCAR liens encumber the 2014 tank.

Third, the court cannot tell whether any of the PACCAR liens also encumber the 2009 tank. The motion states only that the PACCAR liens encumber the 2014 tank and "other scheduled assets." Docket 62 at 2. It is unclear however whether the 2009 tank is one of those "other scheduled assets."

Fourth, the motion identifies a lien held by the California EDD in the amount of $30,343.73. That lien is not listed in the debtor's schedules. See Docket 19, Schedule D. The motion says nothing about this.

On the other hand, there is a lien not mentioned in the motion that is found in Schedule D. It is in the amount of $30,343.07, in favor of the California Franchise Tax Board. Docket 19, Schedule D.

The motion says nothing about the FTB lien and makes no effort to reconcile the two liens. Although the court is inclined to think that the two liens may be one and the same, it will not speculate about this.

Fifth, the motion says nothing about the terms of the carve-out agreement

between the estate and PACCAR. Even though the trustee is not seeking approval of that agreement in connection with this motion, the court must still determine whether the sale is in the best interest of the estate. In short, the court needs information about how the estate will benefit from the sale, including the benefits to the estate from the agreement with PACCAR. The motion says nothing about this.

Finally, the motion says nothing about tax consequences from the sale, if any.

Given the foregoing, the court cannot grant the motion at this time.

18. 17-21995-A-7 JASVINDER CHAHAL — MOTION TO SELL
SCB-5 — 6-12-17 [69]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell the estate's encumbered interest to G&G Transportation to the following:

— a 2015 Peterbilt truck (purchase price of $125,000),
— a 2009 Peterbilt truck (purchase price of $40,000),
— a 2012 Peterbilt tank (purchase price of $70,000),
— a 2011 Peterbilt DS (purchase price of $28,000),
— a 2011 Peterbilt DS (purchase price of $33,000),
— a 2011 Peterbilt DS (purchase price of $35,000),
— a 2008 Peterbilt TN (purchase price of $40,000),
— a 2009 Weldi tank (purchase price of $42,500),
— a 2009 Weldi tank (purchase price of $42,500),
— a 2008 Weldi tank (purchase price of $35,000),
— a 2007 Weldi tank (purchase price of $33,000),
— a 2006 Weldi tank (purchase price of $32,000), and
— a 2005 Weldi tank (purchase price of $30,000).

The purchase price for all items totals $586,000.

The motion will be denied for several reasons.

First, although the motion identifies various encumbrances against the property being sold, it does not unequivocally request approval of the sales free and clear of liens. See 11 U.S.C. § 363(f). The court cannot speculate that the movant is seeking a section 363(f) sale just because the motion identifies encumbrances.

Second, the motion is unclear about the extent to which the PACCAR Financial Corp. claims encumber the assets. For some assets, the motion identifies specific liens. For example, for one of the 2009 Weldi tanks, the motion identifies a $1,500 lien held by Wells Fargo Bank. Docket 69 at 3. For most assets, though, no specific encumbrances are identified. Id.

After describing the assets, the motion identifies the debt of PACCAR, in the amount of $209,448.76, stating that it is secured by the 2015 Peterbilt truck and "other scheduled assets." Docket 69 at 3. The motion does not mention that the PACCAR debt of $209,448.76 represents three different claims, for: $57,254.88, $58,030.38, and $94,163.50. See Docket 19, Schedule D.

The motion also does not identify the "other scheduled assets" subject to the PACCAR claims. Therefore, the court cannot tell from the motion what property

is encumbered by which PACCAR lien.

Third, the motion identifies a lien held by the California EDD in the amount of $30,343.73. Docket 69 at 3. That lien is not listed in the debtor's schedules. See Docket 19, Schedule D. The motion says nothing about this.

On the other hand, there is a lien not mentioned in the motion that is found in Schedule D. It is in the amount of $30,343.07, in favor of the California Franchise Tax Board. Docket 19, Schedule D.

The motion says nothing about the FTB lien and makes no effort to reconcile the two liens. Although the court is inclined to think that the two liens may be one and the same, it will not speculate about this.

Fourth, the motion says nothing about the terms of the carve-out agreement between the estate and PACCAR. Even though the trustee is not seeking approval of that agreement in connection with this motion, the court must still determine whether the sale is in the best interest of the estate. In short, the court needs information about how the estate will benefit from the sale, including the benefits to the estate from the agreement with PACCAR. The motion says nothing about this.

Finally, the motion says nothing about tax consequences from the sale, if any.

Given the foregoing, the court cannot grant the motion at this time.

19. 17-21995-A-7 JASVINDER CHAHAL — MOTION TO APPROVE COMPROMISE
SCB-6 — 6-12-17 [76]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the chapter 7 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 and PACCAR Financial Corp., resolving the sale of assets encumbered PACCAR claims.

Specifically, the trustee is seeking to sell a 2015 Peterbilt truck for $125,000, in connection with another motion also being heard on this calendar. The truck is subject to a claim held by PACCAR in the amount of $58,030.38.

The trustee is also seeking to sell a 2014 Polar tank for $80,000, in connection with another motion also being heard on this calendar. The tank is subject to a claim held by PACCAR in the amount of $57,254.88.

PACCAR holds another claim against the estate, for $94,163.50, secured by another 2015 Peterbilt truck that is in "wrecked" condition. The trustee is

not seeking to sell that truck.

The PACCAR claims total $209,448.76.

The parties have entered into an agreement permitting the estate to sell the 2015 Peterbilt truck (operational) and 2014 Polar tank, as proposed, with PACCAR receiving $164,000 in net proceeds from the sale of these assets. The remaining sales proceeds will be kept by the estate. In addition, the estate will abandon the estate's interest in the wrecked Peterbilt truck. PACCAR will also be entitled to file a deficiency unsecured proof of claim for the balance of the three claims, in the amount of $45,448.76 ($209,448.76 - $164,000).

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the wrecked condition of one of the trucks securing a claim of PACCAR, given the non-marketability of that truck, given that liquidation of the other two assets will bring approximately $41,000 of immediately-available cash to the estate, given the uncertainty of the dividend unsecured creditors will receive in this case, and given the inherent costs, risks, delay, and inconvenience of further litigation pertaining to the PACCAR claims, 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.

20. 17-21995-A-7 JASVINDER CHAHAL — MOTION TO ABANDON
SCB-7 — 6-12-17 [82]

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 a wrecked 2015 Peterbilt truck and a wrecked 2012 Polar tank.

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 trustee has evaluated the assets and determined that they have little or no value. The trustee has been unable to procure purchasers for the assets. More, the truck is subject to a claim for $94,163.50 held by PACCAR Financial Corp. Overall, the trustee has determined that the assets are of inconsequential value to the estate. Given this, the court will order their abandonment. The motion will be granted.

FINAL RULINGS BEGIN HERE

21. 17-21300-A-7 ADRIANA/JUSTIN DILLARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 5-25-17 [12]
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, seeks relief from the automatic stay with respect to a 2007 GMC Light Duty Yukon. The movant has produced evidence that the vehicle has a value of $14,500 ($10,500 in Schedule A/B) and its secured claim is approximately $18,260. Docket 14.

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 27, 2017. 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.

22. 11-37302-A-7 STEVEN/MARLENE STREM — MOTION TO AVOID JUDICIAL LIEN
TJW-1 — 6-13-17 [53]
VS. AMERICAN EXPRESS BANK F.S.B.
AMERICAN SAVINGS BANK

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, American Express 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 to an officer of the institution. The proof of service accompanying the motion indicates that service was not accomplished by certified mail. Docket 57.

Further, in the event the motion is reset for hearing, the debtors should note that the motion contains couple deficiencies. First, there is no evidence in the record of the value of the properties. The supporting declaration merely refers to the debtors' statements in the schedules. Docket 55.

Second, the Fairfield property is identified in the motion as being located at 4398 Solano Rd., with a value of $435,000. But, in the schedules, that property is identified as 4396 and 4398 Solano Rd. The motion does not explain the discrepancy.

23. 14-31810-A-7 MAHMOOD DEAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE
GMR-3 — 5-23-17 [111]

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, Geoffrey Richards, has filed first and final motion for approval of compensation. The requested compensation consists of $20,973.91 in fees and $69.09 in expenses, for a total of $21,043. The services for the sought compensation were provided from December 4, 2014 through the present. The sought compensation represents 78.9 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $354,478.17 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $20,973.91 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $15,223.91 (5% of the next $950,000 ($304,478.17)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $20,973.91 do not exceed the cap of section 326(a).

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) evaluating the debtor's interest in real and personal property,

(4) employing professionals to assist the trustee in the administration of the estate,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(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.

24. 17-20814-A-7 MARIELA DELEON — ORDER TO SHOW CAUSE 6-7-17 [22]

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 E/F on May 24, 2017, but did not pay the $31 filing fee. However, the debtor paid the fee on June 15, 2017. No prejudice has resulted from the delay.

25. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR ORDER PERMITTING INSURER TO ADVANCE INSURANCE PROCEEDS 6-6-17 [433]

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Docket 436. 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 434. 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.

The motion will be dismissed also because it violates Local Bankruptcy Rule 9014-1(c), as the motion does not contain a docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

26. 17-23280-A-7 DONNA HAMMOCK — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 5-30-17 [13]
BMW BANK OF NORTH AMERICA 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, BMW Bank of North America, seeks relief from the automatic stay with respect to a 2016 BMW 740i. The movant obtained possession of the vehicle pre-petition. The movant has produced evidence that the vehicle has a value of $62,953 ($78,000 in Schedule B) and its secured claim is approximately $100,073. Docket 15.

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, the movant has possession of the vehicle already.

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

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

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

27. 17-22585-A-7 GRACIELA BANDA-VARGAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 5-23-17 [19]
FIRST INVESTORS FINANCIAL SERVICES VS.

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

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot.

The movant, First Investors Financial Services, seeks relief from the automatic stay with respect to a 2013 Jeep Wrangler 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 April 19, 2017 and a meeting of creditors was first convened on May 26, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 19. The debtor has not filed a statement of intention.

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, the debtor has not filed a statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of either of the 30-day periods. As a result, the automatic stay automatically terminated on May 19, 2017, 30 days after the petition date.

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

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

Therefore, without this motion being filed, the automatic stay terminated on May 19, 2017.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under

section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.