**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**July 30, 2018 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar: 1, 2, 6, 8.

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 AUGUST 27, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 13, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 20, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF**

**THESE DATES.**

**ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.**

**ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

***MATTERS FOR ARGUMENT***

1. 18-21605-A-7 DENISE CANALS — MOTION TO AVOID JUDICIAL LIEN
MB-2
VS. CAPITAL ONE — 6-26-18 [29]

**Tentative Ruling**: The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $7,408.56 on August 22, 2015. The abstract of judgment was recorded with Sacramento County on November 9, 2016. That lien attached to the debtor's interest in a residential real property in Citrus Heights, 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 $250,000 as of the petition date. Dockets 31 & 16. The unavoidable liens totaled $116,261 on that same date, consisting of a single mortgage in favor of Loan Care. Dockets 31 & 16. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 704.730(a)(3) in the amount of $135,000 in Schedule C. Dockets 31 & 16. The debtor has established her eligibility for the exemption. Docket 35. The debtor is over the age of 65. Id.; Cal. Civ. Pro. Code § 704.730(a)(3)(A).

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).

2. 18-24117-A-7 MELANIE FEJERAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1
HONDA LEASE TRUST VS. — 7-16-18 [12]

**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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2017 Honda Accord. The movant has produced evidence that the vehicle has a value of $19,250 and the outstanding debt under the lease agreement totals approximately $21,759. Docket 14. The debtor also has not made three pre-petition payments under the lease agreement. Id. And, the movant already has possession of the vehicle. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The court concludes that the above is cause for the granting of relief from

stay.

Accordingly, the motion will be granted, awarding prospective relief from stay pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its vehicle pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

3. 16-20838-A-7 LUANNE NICHOLS — MOTION FOR COURT ORDER 7-12-18 [23]
DBJ-2

**Tentative Ruling**: The motion will be dismissed.

The debtor is asking the court to order the Los Angeles County Sheriff to return to the debtor $1,919.57 levied by the Sheriff for Capital One Bank, pursuant to a writ of execution based on a judgment Capital One obtained against the debtor pre-petition. The debtor is also asking the court to order the Sheriff to stop garnishment of the debtor's wages.

The motion will be dismissed. First, the Los Angeles County Sheriff has not been served with the motion. Docket 27.

Second, while Capital One was served with the motion, the notice violates 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 the notice was not addressed to an officer of Capital One. Docket 27. This does not satisfy Rule 7004(h).

Third, even without the above deficiencies, the motion would be denied. The motion says nothing about when the funds in question were garnished from the debtor's bank account: pre-petition, post-petition pre-discharge, or post-petition post-discharge.

If the funds were levied pre-petition, they should have been listed as an asset in Schedule A/B. They are not listed. See Docket 1, Schedule A/B. Because the funds were not scheduled, they were not abandoned back to the debtor at the conclusion of the case. 11 U.S.C. § 554(c) & (d). As such, the funds would still be property of the estate.

If the funds were levied post-petition pre-discharge, it would have been a violation of the automatic stay. The motion says nothing about a violation of the automatic stay.

If the funds were levied post-petition post-discharge, it would have been a violation of the discharge injunction. The motion says nothing about a violation of the discharge injunction.

4. 87-20156-A-7 DALE/ANNA ATKINS MOTION TO
87-2153 BRK-2 SELL
FIBERGLASS REPRESENTATIVES ET AL V. ATKINS 1-12-17 [46]

**Tentative Ruling:** The hearing on the motion will be continued.

The court continued the hearing on this motion from June 11, 2018, for the parties to submit evidence about the present value of the property in question, real property in Vallejo, California, and the value of the property as of Mrs. Atkins' August 19, 2013 passing.

Both parties contend that the present value of the property is $460,000. The parties differ, on the other hand, on the value of the property as of August 19, 2013. The plaintiff movant James Barrett contends that the value of the property was $215,000, whereas the defendant Mr. Atkins contends it was $170,000. Dockets 164 & 165.

On their face, the appraisals regarding value as of August 2013 appear to be quite similar. They both assign an "as is" value to the property. Both appraisals were performed based on a drive-by inspection of the property, assuming average condition of the property inside. And, they both use the comparable sales approach, each taking into account four allegedly comparable sales. The appraisals are not supported by declarations of the persons who prepared them. Nevertheless, neither of the parties have raised evidentiary objections to the other's appraisal. As such, the parties have each waived any evidentiary objections.

The first major difference between the appraisals is that the plaintiff uses 1,986 square feet for the property, whereas Mr. Atkins uses 1,956 square feet. Docket 164 at 27; Docket 165 at 26. Mr. Atkins appears to be incorrect because his other, present value appraisal — by the same person who prepared the 2013 value appraisal, William Pegg — references the property as 1,986 square feet. Docket 165 at 7. Nor has the court seen anything in Mr. Atkins' 2013 value appraisal justifying or explaining the decreased square footage. Also, both of the plaintiff's appraisals say that the property has 1,986 square feet. Docket 164 at 9 & 27. The court concludes then that the property had 1,986 square feet as of August 2013.

Second, the plaintiff's appraisal includes a narrative in the addendum, discussing reconciliation and the specifics of how the comparable sales affected the August 2013 valuation. Docket 164 at 31-33. Such discussion is absent from Mr. Atkins' appraisal. Docket 165, Ex. B. There is only an appraisal compliance addendum with Mr. Atkins' appraisal. Docket 165 at 38.

Third, the plaintiff's appraisal says that the price per square foot for the property as of August 2013 was $108.26 ($215,000/1,986). This is based on the following comparable sales:

Comparable # 1 (Short Sale) — 1,520 square foot home sold for $200,000 ($131.58 sq/ft) on June 28, 2013;

Comparable # 2 (REO) — 1,957 square foot home sold for $206,500 ($105.52 sq/ft) in December 2012 (considered by both appraisals);

Comparable # 3 (Short Sale) — 1,957 square foot home sold for $215,000 ($109.86 sq/ft) on October 31, 2012;

Comparable # 4 (Short Sale) — 1,684 square foot home sold for $181,000 ($107.48 sq/ft) on March 13, 2013 (considered by both appraisals).

Docket 164 at 27 & 29.

Mr. Atkins' appraisal says indicates that the price per square foot for the property as of August 2013 was $86.91 ($170,000/1,956). This is based on the following comparable sales:

Comparable # 1 (Short Sale) — 1,957 square foot home sold for $170,000 ($86.87 sq/ft) on January 30, 2012;

Comparable # 2 (REO) — 1,957 square foot home sold for $206,500 ($105.52 sq/ft) in December 2012 (considered by both appraisals);

Comparable # 3 (Short Sale) — 1,684 square foot home sold for $181,000 ($107.48 sq/ft) on March 13, 2013 (considered by both appraisals);

Comparable # 4 (Foreclosure) — 1,530 square foot home sold for $150,000 ($98.04 sq/ft) on February 15, 2013.

Docket 165 at 26 & 29.

The court gives no weight to Comparable # 1 in Dale Atkins' appraisal. It is not truly a comparable, given the sale took place approximately 19 months prior to August 2013. The sale took place on January 30, 2012. Also, the appraiser has not taken into account the age of this comparable sale. The overall comparison to the subject property is marked as "Equal." Docket 165 at 26. This makes no sense given the sale's took place substantially earlier in time.

Comparable # 4 in Mr. Atkins' appraisal also makes no sense. It is a foreclosure. It is not a property sold on the open market, such as a short sale or REO (bank owned). This leaves Comparable # 2 and Comparable # 3, which are both also in the plaintiff's appraisal, at $105.52 sq/ft and $107.48 sq/ft, respectively. When these two comparables are taken together with Comparable # 1 ($131.58 sq/ft) from the plaintiff's appraisal, which is closest in time (June 28, 2013) to the relevant August 2013 valuation period, the plaintiff's $108.26 price per square or $215,000 valuation is adequately supported by his appraisal.

Comparable # 3 in the plaintiff's appraisal also supports the $108.26 price per square foot. That comparable, while 10 months older than the relevant valuation date, is at $109.86 per square foot.

Accordingly, the court determines the value of the property to have been $215,000 as of August 2013.

Nevertheless, the court still cannot determine the plaintiff's present interest in the property because there is no evidence in the record of the encumbrances against the property as of August 19, 2013. The court cannot grant the motion. The hearing on the motion will be continued for the movant to submit evidence on the encumbrances against the property as of August 19, 2013. The record on this motion is otherwise closed.

5. 16-26561-A-7 PHONG TIEN
FF-3
VS. REAL TIME RESOLUTIONS, INC.

MOTION TO
AVOID JUDICIAL LIEN
5-3-18 [45]

**Tentative Ruling:** The motion will be denied without prejudice.

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 subject real property had an approximate value of $395,000 as of the petition date. Dockets 45, 47, 48, 54. 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, 54. 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). The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) in the amount of $8,960 in Amended Schedule C filed on July 13, 2018. Docket 54.

The motion will be denied because the debtor amended Schedule C on July 13, 2018, to change an exemption in the subject property, but he served the Amended Schedule C on the trustee and creditors only on July 13. Docket 55. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied. This motion is being heard on July 30, only 17 days after the Amended Schedule C was served.

6. 15-23164-A-7 JF MCCRAY PLASTERING, INC.
DNL-11

MOTION TO
APPROVE COMPROMISE
7-9-18 [141]

**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 the trustees for various Carpenter trust funds, resolving a pending adversary proceeding where the trustee disputes the Carpenter Funds' assertion that their $297,186.08 proof of claim is secured by proceeds the trustee received from the sale of real property which had been purchased by proceeds generated from a receivable of the debtor. The receivable was transferred by the debtor to its principal just few days prior to the Carpenter Funds recording a lien against the debtor's assets.

Under the terms of the compromise, the trustee will pay $27,000 to the Carpenter Funds in full satisfaction of their secured claim against the sale proceeds. The remainder of any encumbrance held by the Carpenter Funds against the sale proceeds will be avoided. The Carpenter Funds' proof of claim will be reduced to $270,186.08 (given the payment of the $27,000) and adjusted to general unsecured priority. The parties will execute mutual releases and the adversary proceeding will be dismissed.

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 trustee received $253,000 from the sale of the real property, given that the Carpenter Funds' proof of claim is in the amount of $297,186.08 and has the potential to be declared wholly secured by the sale proceeds, 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.

7. 18-20571-A-7 MARK ENOS — MOTION TO RECONSIDER
PLC-6 — 7-2-18 [90]

**Tentative Ruling:** While the court will reconsider the earlier conversion of the case in light of the facts presented in this motion, the result will remain the same.

The debtor asks the court to reconsider its June 20, 2018 order converting the case from chapter 13 to chapter 7. Docket 74. The debtor wants reconversion back to chapter 13.

The debtor filed a prior chapter 13 case, Case No. 17-21520, on March 8, 2017. The case was dismissed on January 6, 2018. Case No. 17-21520, Docket 92. Among other things, the court denied plan confirmation in that case due in part to the debtor's failure to make plan payments. Case No. 17-21520, Dockets 42 & 46.

The debtor filed the instant chapter 13 case on February 1, 2018. The court entered an order confirming a chapter 13 plan on March 29, 2018. Docket 51. On April 30, 2018, the chapter 13 trustee filed a motion to dismiss or convert the case to chapter 7. Docket 61. On June 20, the court entered an order converting the case to chapter 7. Dockets 73 & 74.

On July 2, the debtor filed the instant motion, seeking reconsideration of the

order converting the case to chapter 7. The debtor has invoked the excusable neglect provision of Fed. R. Civ. P. 60(b)(1) and Rule 60(b)(6).

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"*(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.*"

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The motion has been filed timely. It was filed on July 2, 12 days after conversion of the case. Docket 90.

The motion will be denied. While the court is convinced that excusable neglect warrants reconsideration, that reconsideration does not warrant a different result.

"*Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith].*"

Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The debtor's counsel admits that "the Conversion to Chapter 7 [was] [his] fault." Docket 93 at 3. He failed to file a timely written opposition to the trustee's motion to dismiss or convert. He failed to file a response because he underwent a kidney procedure on May 2 and his server crashed on May 3.

Nonetheless, the debtor has not demonstrated that case should not be converted to one under chapter 7. In its ruling granting conversion, the court determined:

"*The debtor has failed to pay to the trustee approximately $6,200 as required by the proposed plan. As noted in the motion, this is not the first time the debtor has failed to make timely plan payments. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not*

*feasible. This is cause for dismissal or conversion, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1).*

"*After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $30,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.*"

Docket 73.

The debtor has not produced evidence refuting that he was $6,200 delinquent under the confirmed plan, on the motion's April 30 filing date or the motion's June 18 hearing date.

The debtor filed a modified chapter 13 plan and a motion to confirm it. However, the modified plan and motion were not filed until one week after the court granted the conversion. They were not filed until June 25. Dockets 82 & 85. Hence, there would have been no modified plan for the court to consider when it granted conversion.

Reconsideration takes into account only the circumstances that existed as of the time the court decided the motion in question. Reconsideration does not take into account circumstances that came into existence after the court decided the motion. Otherwise, the court's decisions would always be subject to subsequent events. There would be little or no finality to court decisions.

Finally, as mentioned in the above ruling, "this is not the first time the debtor has failed to make timely plan payments." Docket 73. The debtor has a history of plan defaults. The court denied plan confirmation in the debtor's prior case due in part to his failure to make plan payments. Case No. 17-21520, Dockets 42 & 46.

The debtor's delinquencies in the prior and this case came at their beginning. In the prior case, the plan as to which confirmation was denied was filed on May 8, 2017. Case No. 17-21520, Docket 22. The debtor was delinquent under that plan within one month, by June 13, 2017. Case No. 17-21520, Docket 42. In this case, the debtor filed his plan on February 1, 2018. Docket 5. The debtor was delinquent under that plan by April 2018. Docket 61. This demonstrates to the court an inability of the debtor to complete a chapter 13 plan.

Given the foregoing, while the court has reconsidered its ruling, the outcome is the same.

8. 18-23186-A-7 JAGDEV RAI — MOTION FOR RELIEF FROM AUTOMATIC STAY
NBL-1 — 7-12-18 [28]
GERALD NEIL 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, Gerald Neil, seeks relief from the automatic stay as to real property in Winters, California. The motion should be consulted for more detailed description of the property.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in March 2016. The movant served the debtor with a five-day notice to pay or quit on March 15, 2018. The notice included a provision for the forfeiture of the lease in the event the debtor fails to cure the outstanding rent. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on April 6. The movant obtained a judgment for possession on May 4. The debtor filed this case on May 21, 2018.

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, he has defaulted under the lease agreement by failing to pay the rent due from March 2016 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the five-day notice served on him 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).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

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

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

***FINAL RULINGS BEGIN HERE***

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| 9. | 09-44733-A-7<br>HCS-3 | ROBERT WIEMER | MOTION TO<br>SELL<br>5-14-18 [252] |

**Final Ruling:** This motion has been voluntarily dismissed. Docket 264.

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| 10. | 17-23136-A-7<br>SLC-1 | ANNE WILLIAMS | MOTION TO<br>APPROVE COMPROMISE<br>6-27-18 [31] |

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

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate on one hand and Kent and Bonnie Williams on the other, resolving the estate's $8,000 preference claim against them.

Under the terms of the compromise, Kent and Bonnie Williams will pay $5,500 to the estate in full satisfaction of the preference claim.

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 small amount at stake and 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.

11. 13-31341-A-7 ROBERT/DOLORES KYLE — MOTION TO AVOID JUDICIAL LIEN
BB-4
VS. BUTTE COUNTY CREDIT BUREAU, STANISLAUS CREDIT CONTROL SERVICES, INC.
6-11-18 [36]

**Final Ruling:** The motion will be denied without prejudice because it is not supported by a declaration or affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(3)(D), 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)."

12. 18-21349-A-7 MYRNA SYKES — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS.
6-27-18 [44]

**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, Americredit Financial Services, seeks relief from the automatic stay with respect to a 2007 Chevrolet Tahoe vehicle.

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

The petition here was filed on March 8, 2018 as a chapter 13 proceeding. The debtor converted the case to chapter 7 on May 11. Docket 24. No statement of intention has been filed, however.

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, indicating her intent with respect to the subject vehicle. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-

day period. As a result, the automatic stay automatically terminated on June 11, 2018, 30 days after the conversion date.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on June 20, 2018, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 11, 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.

13. 18-20956-A-7 JOHN/CAROLYN HANNESSON — MOTION TO AVOID JUDICIAL LIEN
SLH-7
VS. AMERICAN EXPRESS BANK, F.S.B. — 6-26-18 [101]

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

The motion will be granted.

A judgment was entered against the debtor John Hannesson in favor of American Express Bank for the sum of $10,372.13 on January 22, 2016. Abstract of the judgment was recorded with San Joaquin County on May 28, 2016. That lien attached to the debtor's interest in a residential real property in Lodi, 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 $433,992 as of the petition date. Dockets 103 & 104.

The unavoidable liens totaled $268,980.06 on that same date, consisting of: (1) a principal balance of $198,210.44 on which the debtor is paying interest and is making monthly payments; and (2) a deferred principal balance of $70,769.62 on which the debtor is not paying interest or making monthly payment presently. Docket 103; Docket 104, Exs. E, F, G.

The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 704.730 in the amount of $175,000 in Amended Schedule C. Docket 29. The Amended Schedule C was served on the trustee and the creditors on April 27, 2018. Docket 61. No objections were filed against the changed exemption claim in the Amended Schedule C. The debtor has provided evidence of his qualification for the $175,000 exemption under Cal. Civ. Pro. Code § 704.730(a)(3)(A). The debtor is 65 years of age or older. Docket 103 at 1.

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

14. 18-22563-A-7 CHRISTINE OBERG — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
GLOBAL LENDING SERVICES, L.L.C. VS. — 6-11-18 [21]

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

The motion will be dismissed as moot.

The movant, Global Lending Services, L.L.C., seeks relief from the automatic stay with respect to a 2017 Dodge Challenger 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 26, 2018 and a meeting of creditors was first convened on June 5, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 28. The debtor filed a statement of intention on May 7, 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, she did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on July 5, 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 June 7, 2018, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 5, 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.

15. 15-23876-A-7 RUBEN REYNOSO
PA-10

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-29-18 [120]

**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.

Pino & Associates, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $8,000 in fees (reduced from $19,227.50) and $3,084.50 (also reduced) in expenses, for a total of $11,084.50. This motion covers the period from August 3, 2015 through May 1, 2017. The court approved the movant's employment as the trustee's attorney on August 12, 2015. In performing its services, the movant charged hourly rates of $125 and $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing schedules and other petition documents, (2) assisting the trustee with the sale of various personal property items, including vehicles, (3) assisting the trustee with the sale of assets that were not scheduled, (4) preparing and prosecuting sale motions, (5) attending court hearings, (6) assisting the trustee with the general administration of the estate, and (7) preparing and filing employment and compensation motions.

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