UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 17, 2015 at 10:00 a.m.

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

1, 2, 3, 4, 6, 7, 10

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a 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 SEPTEMBER 14, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 31, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 8, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1.	15-23500-A-7 JME-1	MARCOS DIAZ AND SALOO REYES	AMENDED MOTION TO DISMISS CASE 7-9-15 [18]

Tentative Ruling: The motion will be granted.

The debtors are seeking the dismissal of this case as to Debtor Marcos Diaz. When this case was filed on April 29, 2015, the debtors' marital dissolution had been already finalized. The trustee does not oppose the motion.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." Dismissal should be denied if it would prejudice the debtor's creditors. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004).

As the debtors were not married as of the petition date, they cannot prosecute this bankruptcy case jointly. Accordingly, the motion be granted and the case will be dismissed as to Debtor Marcos Diaz.

2.	11-25317-A-7 DNL-3	MOHAMMAD/SOUSAN MOTIEY	MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER 7-27-15 [83]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $245,000 the estate's interest in a real property in Placerville, California to Angelee and Beupied Zwissig. The trustee also asks for approval of the payment of a 6% real estate commission, in the amount of $14,700.

The property is subject to a single mortgage in favor of Bank of America in the amount of $10,000.

The trustee recovered the property after a default under a settlement agreement between the trustee and the transferees of the property, in a fraudulent transfer adversary proceeding filed by the trustee. After the default, the trustee obtained a judgment avoiding the transfer of the property and providing that the trustee shall market and sell the property. As the settlement agreement called for a payment of $100,000 to the estate, the judgment provides that the estate will retain $100,000 from the net sales proceeds, plus sufficient funds to satisfy all administrative and litigation costs of the estate relating to the enforcement of the settlement, the trustee's marketing and sale of the property, including attorney's fees, real estate commissions, taxes and the trustee's fees.

To date, the filed unsecured claims total $106,657.85.

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 substantial 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. The court will authorize payment of the real estate commission to Arrowhead Housing in accordance with its employment terms.

3. 15-24137-A-7 DEREK GRAVES
KJS-1
TRICOLOR AUTO GROUP, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-7-15 [16]

Tentative Ruling: The motion will be granted in part.

The movant, Tricolor Auto Group, L.L.C., seeks relief from the automatic stay with respect to a 2007 Dodge Ram. The movant asserts that the vehicle has a value of $12,550 and the scheduled value of the vehicle is $7,200, while its secured claim is approximately $18,508.

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 July 20, 2015. 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)(1) and (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.

However, the court will not enter an order directing the debtor to "voluntarily" surrender the vehicle to the movant. This requires a request for injunction, which must be made via an adversary proceeding. See Fed. R. Bankr. P. 7001(7).

4. 15-24144-A-7 AHISHA LEWIS
MKO-1
ART BEADLE, ET AL. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-28-15 [14]

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 dismissed as moot.

The movant, Art Beadle, Zoe Beadle and Alina Sargiss, seeks relief from the

automatic stay as to a real property in Sacramento, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On June 20, 2014, the debtor filed a chapter 13 case (case no. 14-26512). But, the court dismissed that case on April 4, 2015 due to the debtor's failure to make plan payments. The debtor filed the instant case on May 22, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on June 21, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on June 21, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

5. 15-25644-A-7 LAVERNE JONES — ORDER TO SHOW CAUSE 7-29-15 [12]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay the petition filing fee and did not apply to pay the fee in installments. The filing fee of $335 was due on July 15, 2015 and has not been paid yet.

6. 13-26551-A-7 MICHAEL HOLT
EJN-3
VS. SILICON VALLEY HOLDING, L.L.C. — OBJECTION TO CLAIM 6-30-15 [217]

Tentative Ruling: The objection will be sustained.

On February 11, 2014, claimant Silicon Valley Holding, L.L.C., filed a proof of claim in the amount of $2,050 (claim no. 27). The proof of claim is executed by Wolfgang Remkes. The trustee objects to the claim.

The claim will be disallowed for several reasons. First, the claim asserts priority under 11 U.S.C. § 507(a)(2), which allows priority status for "administrative expenses allowed under section 503(b)." But, such

administrative expenses require a notice and hearing. See 11 U.S.C. § 503(b). The subject claim has not been allowed under section 503(b) after notice and hearing.

Second, while a proof of claim is presumed to be prima facie valid, the trustee cannot be expected to prove a false negative. If the claim is indeed based on section 503(b), it should be clear from the proof of claim what is the basis for the claim under that section.

The basis for the proof of claim states only "CPA Invoice, Buyout, Final Partnership Tax Return." POC 27. But, this does not point to any basis for the claim under section 503(b). Compensation awarded under section 330(a) and allowed as an administrative expense under section 503(b)(2) does not apply because there is nothing in the proof of claim indicating that the CPA was retained by the estate, which is the only compensation contemplated by section 330(a). The proof of claim does not even identify the CPA.

Further, there is nothing permitting the claim to be classified under section 503(b)(1), for actual and necessary costs and expenses of preserving the estate. The proof of claim references a buyout, presumably referring to the sale of the estate's interest in Silicon Valley Holding, L.L.C. to Wolfgang Remkes. Docket 119.

There is nothing with or in the proof of claim indicating that the estate was required to pay the "CPA Invoice" or the "Final Partnership Tax Return," in connection with that sale.

The objection will be sustained.

7. 15-25479-A-7 CHAVONNE JONES — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-1
EDEN HOUSING MANAGEMENT, INC. VS. — 7-30-15 [14]

Tentative Ruling: The motion will be granted.

The movant, Eden Housing Management, Inc., seeks relief from the automatic stay as to real property in Tracy, California.

The movant is the legal owner or manager of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in February 2015. The movant served the debtor with a three-day notice to pay or quit on June 9, 2015. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on June 17, 2015. A trial was set in the action for July 13, 2015. The debtor filed this bankruptcy case on July 30, 2015.

This is a liquidation proceeding and the debtor has no ownership interest in the property. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from February 2015 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on her pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (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.

8. 15-22390-A-7 MARK HILL — MOTION TO COMPEL ABANDONMENT 7-10-15 [19]
DCN-1

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Montague, California. The debtor claims that the property has a value of $125,000 and it is subject to a $27,005 mortgage. Additionally, the debtor contends that his former spouse has a community property interest in the property, amounting to $68,000, under a 2010 marital settlement agreement. The debtor contends that he has also claimed an exemption of $16,876 in the property and asserts that someone holds a "[c]o-ownership interest" of 50% in the property.

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

The motion will be denied for several reasons. First, the debtor's exemption claim in the property is for $16,359.89, not $16,876, under Cal. Civ. Proc. Code § 703.140(b)(5). Docket 22, Amended Schedule C.

Second, the motion says nothing about why the debtor is subtracting a 50% "[c]o-ownership interest" in the property, totaling $51,497.50. Docket 19 at 3. The court has no information about who owns that interest or why that interest is relevant to the abandonment analysis.

Finally, while the motion subtracts $68,000 in equity for the community property interest of the debtor's former wife, the motion makes no effort to address whether this bankruptcy case involves community debt that could be satisfied from community property, including the community property interest of the debtor's former wife in the property.

9. 15-21594-A-7 GAIL NESBIT — MOTION TO CONVERT TO CHAPTER 13 CASE 7-27-15 [53]
SJS-3

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible

for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

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

However, while the debtor has established that he is within the eligibility debt limits for chapter 13 relief, the motion states nothing about whether the debtor has regular income to fund a chapter 13 plan.

More important, the motion does not establish that the conversion is not sought for an improper purpose. The debtor's Amended Schedule J (Docket 25) reflects a positive income of $50.72, meaning that the debtor's monthly disposable income to fund a chapter 13 plan is de minimis. This is important when one accounts for the chapter 13 trustee administrative fees and additional attorney's fees of $1,700 called for by the debtor's chapter 13 plan. Docket 38 at 1.

Moreover, the plan pays general unsecured creditors a 0% dividend. Docket 38 at 4. As such, the court is at a loss about the propriety of the purpose of the conversion. The debtor's ineligibility for a chapter 7 discharge in this case does not by itself establish a proper purpose for the conversion. The administration of a chapter 7 estate is not precluded by the debtor's ineligibility for a chapter 7 discharge. Accordingly, the motion will be denied.

10. 13-20898-A-7 CORNEL/TINA VANCEA — MOTION TO APPROVE COMPENSATION OF TRUSTEE
KJH-1 — 6-17-15 [200]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from August 3. The movant filed a missing set of exhibits in support of the motion.

The chapter 7 trustee, Kimberly Husted, has filed her first and final motion for approval of compensation. The requested compensation consists of $5,000 in fees (reduced from $47,699.87) and $10,078.62 in expenses, for a total of $15,078.62. The services for the sought compensation were provided from January 24, 2013 through the present. The sought compensation represents 113.8 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 $888,997.38 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $47,669.87 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $41,949.87 (5% of the next $950,000 (or $838,997.38)). Hence, the requested trustee fees of $5,000 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 L.L.C. (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) examining the debtors, (3) assessing three pre-petition real property transfers, (4) employing professionals to assist the estate in the recovery of the transfers, (5) reviewing business records, (6) assessing tax consequences from the sale of the properties, (7) negotiating showings with the renter of one of the properties, as it involved a person with a disability, (8) agreeing to a compromise with the renter, (9) addressing issues of vandalism and squatters at another of the properties, (10) reviewing and analyzing claims, (11) preparing final report, and (12) preparing compensation motion.

In addition, the trustee advanced substantial expenses to insure the properties, replace a water heater at one of the properties and repair the dry wall damage that resulted from the breakdown of the water heater.

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

FINAL RULINGS BEGIN HERE

11. 15-24902-A-7 SANDRA DENIO — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 7-14-15 [19]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be granted.

The movant, Santander Consumer USA, seeks relief from the automatic stay with respect to a 2007 Buick Lucerne. The vehicle is identified as a 2006 Buick Lucerne in the petition schedules and statements. The movant has produced evidence that the vehicle has a value of $9,725 ($8,000 in Schedule B) and its secured claim is approximately $18,209.

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 July 23, 2015. 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.

12. 15-25104-A-7 CAMILLE COOPER — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 7-17-15 [26]
WELLS FARGO BANK, N.A. VS.

Final Ruling: The motion will be dismissed as moot as the case was dismissed on July 28, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). Additionally, the motion seeks no retroactive or in rem relief from stay.

13. 11-49912-A-7 GINA FLAHARTY
JMH-1

MOTION TO
APPROVE COMPENSATION OF TRUSTEE
7-20-15 [214]

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, J. Michael Hopper, has filed first and final motion for approval of compensation. The requested compensation consists of $30,341.82 in fees and $0.00 in expenses. The services for the sought compensation were provided from December 30, 2011 through April 30, 2015. The sought compensation represents 108.2 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 $541,836.47 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $30,341.82 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $24,591.82 (5% of the next $950,000 (or $491,836.47)). Hence, the requested trustee fees of $8,250 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 L.L.C. (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 legal malpractice claims held by the debtor and her wholly-owned corporation, Travel-Med (4) assessing a lien against the claims held by Passport Health, Inc, a judgment creditor of the debtor and Travel-Med, (5) managing Travel-Med, (6) employing professionals to assist the estate in the administration and defense of the claims, (7) negotiating settlements with Travel-Med, Passport and the malpractice defendants, (8) communicating with the estate's general and special counsel about various issues, (9) reviewing and analyzing claims, (10) addressing tax

issues, (11) preparing final report, and (12) 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.

14. 12-28413-A-7 F. RODGERS CORPORATION
SAR-2
SCS DEVELOPMENT COMPANY VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-10-15 [830]

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, SCS Development Company, d.b.a. Citation Homes Central, seeks relief from the automatic stay to proceed in state court with its construction defect cross-claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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

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

15. 15-23636-A-7 MIXCAUGH/MARIA RODRIGUEZ
VS. 1800 LOAN MART

MOTION TO
AVOID JUDICIAL LIEN
6-24-15 [16]

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

The debtor served the motion on 1800 Loan Mart without addressing it "to the attention of an officer, a managing or general agent, or to any other agent

authorized by appointment or by law to receive service of process." Docket 21.

The proof of service also does not say when the motion papers were served. Docket 21.

The motion will be dismissed also because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Docket 29.

Finally, while the motion refers to a loan made to debtors by 1800 Loan Mart, the loan is not part of the papers submitted with the motion. Thus, the reference to the loan in the motion is inadmissible hearsay.

16. 15-23636-A-7 MIXCAUGH/MARIA RODRIGUEZ VS. CONSUMER PORTFOLIO SERVICES — MOTION TO AVOID JUDICIAL LIEN 6-24-15 [18]

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

The debtor served the motion on Consumer Portfolio Services without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 20.

The proof of service also does not say when the motion papers were served. Docket 20.

The motion will be dismissed also because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Docket 30.

Finally, while the motion refers to a loan made to debtors by Consumer Portfolio Services, the loan is not part of the papers submitted with the motion. Thus, the reference to the loan in the motion is inadmissible hearsay.

17. 14-32144-A-7 SIMPLY FOOD ENTERPRISES, L.L.C. SCB-3 — MOTION TO APPROVE COMPROMISE 7-15-15 [45]

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

are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the spouse of the debtor's principal Alicia Kinsella, Scott Kinsella, resolving avoidance claims pertaining to pre-petition transfers totaling $145,696.90 and post-petition transfers totaling $11,994.94.

Under the terms of the compromise, Scott Kinsella will pay $4,000 to the estate in full satisfaction of the claims.

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 Kinsellas have separated, given that Alicia Kinsella is about to file her own chapter 7 bankruptcy case, given that Scott Kinsella contemplates filing his own chapter 13 bankruptcy case as well, given that they dispute the avoidable nature of the transfers, claiming that the transfers were salary payments and business expense reimbursements, given that the Kinsellas claim not to have any of the received funds, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

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

18. 12-21645-A-7 LISA TAYLOR — MOTION TO APPROVE COMPENSATION OF TRUSTEE
JMH-1 — 7-20-15 [124]

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, J. Michael Hopper, has filed first and final motion for

approval of compensation. The requested compensation consists of $8,250 in fees and $0.00 in expenses. The services for the sought compensation were provided from January 27, 2012 through April 25, 2015. The sought compensation represents 46.8 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 $100,000 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $8,250 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $2,500 (5% of the next $950,000 (or $50,000)). Hence, the requested trustee fees of $8,250 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 L.L.C. (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 a pending action of the debtor against a former employer, (4) employing professionals to assist the estate in the administration of estate assets, including the pending action, (5) communicating with the estate's general and special counsel about various issues, (6) attending a day-long mediation and negotiating settlement of the pending action, (7) reviewing and analyzing claims, (8) addressing tax issues, (9) preparing final report, and (10) preparing compensation motion.

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

19. 15-20545-A-7 BARBARA HARTMAN — MOTION TO COMPEL ABANDONMENT 7-15-15 [15]
MET-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Vacaville, California. The entire equity in the property is exempt.

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

The debtor has scheduled the value of the property at $275,000. The property is encumbered by a single deed of trust in favor of Wells Fargo Home Mortgage in the amount of $181,278. The debtor has exempted $93,722 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances and exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

20. 15-23347-A-7 MATTHEW KAHLE
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-16-15 [25]

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2014 Chevrolet Silverado 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 24, 2015 and a meeting of creditors was first convened on June 2, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 24. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30

days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor has not done so. And, no 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 July 2, 2015, 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 3, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 2, 2015.

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.

21. 14-32255-A-7 MARK LEE — MOTION TO APPROVE COMPROMISE
SCF-1 — 7-8-15 [16]

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

are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor's former wife, Pamela Lee, resolving an avoidance claim pertaining to the debtor's transfer of an RV and a vehicle with a total value of $15,000 to Ms. Lee.

Under the terms of the compromise, Ms. Lee will pay $8,500 to the estate in full satisfaction of the 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 Ms. Lee's dispute of the claim, given the small amount at stake, 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.

22. 15-25362-A-7 ROBERT REAVIS — MOTION TO AVOID JUDICIAL LIEN
MC-1
VS. ATLANTIC CREDIT AND FINANCE, INC. — 7-10-15 [9]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Atlantic Credit & Finance, Inc. for the sum of $5,264.86 on July 10, 2008. The abstract of judgment was recorded with Sacramento County on May 4, 2009. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject

real property had an approximate value of $155,000 as of the petition date. Dockets 11 & 12. The unavoidable liens totaled $313,269 on that same date, consisting of a mortgage in favor of First Franklin for $260,781 and another mortgage in favor of First Franklin for $52,488. Dockets 11 & 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 11 & 12.

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).

23. 15-25362-A-7 ROBERT REAVIS — MOTION TO AVOID JUDICIAL LIEN
MC-2
VS. CAPITAL RECOVERY GROUP II, L.L.C. — 7-10-15 [14]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Newport Capital Recovery Group II, L.L.C. for the sum of $3,770.16 on February 22, 2010. The abstract of judgment was recorded with Sacramento County on May 10, 2010. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $155,000 as of the petition date. Dockets 16 & 17. The unavoidable liens totaled $313,269 on that same date, consisting of a mortgage in favor of First Franklin for $260,781 and another mortgage in favor of First Franklin for $52,488. Dockets 16 & 17. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 16 & 17.

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).

24. 14-32070-A-7 CAPITOL AIR SYSTEMS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 7-17-15 [164]

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 2012 Chevrolet Silverado. The movant has produced evidence that the vehicle has a value of approximately $23,925 and its secured claim is approximately $26,879. Docket 166.

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 non-opposition to the motion.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is not in the movant's possession and it is depreciating in value.

25. 14-31073-A-7 FASIL HAYAT AND NURGUS NAZIR — MOTION TO REOPEN CASE 6-30-15 [31]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted.

The debtors request the court to reopen the case so they can file a dischargeability adversary proceeding, pertaining to the student loans of Nurgus Nazir.

The court can reopen a case to "accord relief to the debtor." 11 U.S.C. § 350(b). Motions for the reopening of cases should be "routinely granted because the case is necessarily reopened to consider the underlying request for relief." In re Dodge, 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992) (citing In re Corgiat, 123 B.R. 388, 392, 393 (Bankr. E.D. Cal. 1991)).

The case will be reopened for the limited purpose to permit the debtors to prosecute a dischargeability adversary proceeding. However, if no action is

pending within 30 days, the case will be re-closed without further notice or hearing.

The motion will be granted.

26. 12-29776-A-7 DEUCES WILD, INC. MOTION FOR
DNL-9 ADMINISTRATIVE EXPENSES
7-20-15 [140]

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 the allowance of payments of post-petition estate income tax liability to the IRS in the amount of $3,510 (for the 2012 and 2013 years) and to the California Franchise Tax Board in the amount of $4,043 (for the 2012 through 2015 years).

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

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

This case was filed on May 21, 2012. The tax liability in question was incurred from 2012 through 2015. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

27. 15-22384-A-7 YER HER MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 7-16-15 [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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2002 Nissan Frontier 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 26, 2015 and a meeting of creditors was first convened on May 4, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 25. The debtor has not filed timely 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 timely a statement of intention. The debtor filed a statement of intention only on April 30, 2015. Docket 12. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 25, 2015, 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 April 25, 2015.

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.

28. 15-23484-A-7 LAWRENCE BRENNAN — MOTION TO AVOID JUDICIAL LIEN
JMC-2
VS. AMERICAN EXPRESS BANK, F.S.B. — 7-13-15 [24]

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 solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Manager, or Agent Designated for Service of Process." Docket 28. This does not satisfy Rule 7004(h).

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

29. 15-24996-A-7 BEATRICE SMITH WARE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 7-14-15 [24]

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2015 Chrysler 200 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 June 22, 2015 and a meeting of creditors was first convened on July 29, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 22. 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 filed no statement of intention. 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 July 22, 2015, 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 July 22, 2015.

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.