UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 15, 2018 at 10:00 a.m.

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

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 NOVEMBER 19, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 5, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 13, 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. 08-37910-A-7 MARK JOCOY
DNL-16

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
9-24-18 [190]

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

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $20,000 in fees (reduced from $47,153.50) and $1,251.44 in expenses, for a total of $21,251.44. This motion covers the period from April 23, 2012 through September 21, 2018. The court approved the movant's employment as the trustee's attorney on May 3, 2012. In performing its services, the movant charged hourly rates of $50, $75, $175, $195, $200, $225, $225, $275, $325, $350, $375, $400, and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the administration of real property in Mexico, (2) preparing and prosecuting motions to compel the debtor to turn over the property and post-petition rents, (3) obtaining court permission to lease the property, (4) obtaining court permission to pay homeowner association dues, (5) assisting the trustee with the sale of the property, (6) preparing and prosecuting a motion for compromise relating to the property's sale and division of sales proceeds with a creditor who formerly co-owned the property with the debtor (also involving an adversary proceeding), 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.

2. 08-37910-A-7 MARK JOCOY
DNL-17

MOTION TO ASSIGN THE DEBTOR'S RIGHT TO PAYMENT
9-24-18 [196]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or

opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

The trustee seeks the assignment of the debtor's right to $3,588.66 from the sale proceeds of Mexican real property. Cal. Civ. Pro. Code § 708.510(a) provides:

"*Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments: (1) Wages due from the federal government that are not subject to withholding under an earnings withholding order. (2) Rents. (3) Commissions. (4) Royalties. (5) Payments due from a patent or copyright. (6) Insurance policy loan value.*"

Cal. Civ. Pro. Code § 708.510(a) provides the court with authority only to "order the judgment debtor to assign to the judgment creditor . . . a right to payment." While on its face the statute provides the court only with authority to order the judgment debtor to assign his interest in a right to payment, the statute has been interpreted to give courts authority to directly assign the judgment debtor's interest in the right to payment to the judgment creditor. See, e.g., Weingarten Realty Investors v. Chiang, 212 Cal. App. 4th 163, 166-67 (2012) (superseded by statute on other grounds by Casiopea Bovet, LLC v. Chiang, 12 Cal. App. 5th 656, 662 n.2 (2017)).

"[D]irect assignment is valid under California law," despite the language of section 708.510(a).

Advanced Biomedical, Inc. v. Specialty Laboratories, Inc. (In re Advanced Biomedical, Inc.), No. AP 14-01275-MW, 2016 WL 7188651, at *4 (B.A.P. 9th Cir. Dec. 2, 2016).

"*A judicial assignment order could take one of two forms. The court could order Bhang to assign to Mentor property rights sufficient to pay the judgment. See generally Cal. Code of Civ. Proc. §§ 708.510-560.6 Alternatively, under California law, it 'seems clear' that the court could itself directly assign Bhang's property rights to Mentor up to the amount that is owed under the judgment. A. Ahart, California Practice Guide: Enforcing Judgments and Debts ¶ 6:1422.6 (2017) ('clear') (citing In re Advanced Biomedical, Inc., 547 B.R. 337, 340-42 (Bankr. E.D. Cal. 2016) (discussing in turn Weingarten Realty Investors v. Chiang, 212 Cal. App. 4th 163 (2012)))."*

Mentor Capital, Inc. v. Bhang Chocolate Co., Inc., No. 14-CV-03630-LB, 2017 WL 3335767, at *3 (N.D. Cal. Aug. 4, 2017).

On July 7, 2014, the court ordered the debtor to turn over to the trustee $11,800 in post-petition rents the debtor received from the Mexican real property. Docket 113. The trustee has not received these funds. The debtor

also claimed an exemption in the subject real property in the amount of $3,588.66. Docket 45.

As the trustee is a judgment creditor of the debtor, the remedy is available to the trustee. However, the debtor has the right to claim exemptions to defeat the assignment. The debtor has claimed an exemption and therefore the trustee is not entitled to the funds.

3. 15-26414-A-7 JAMES LLANTERO — MOTION TO AVOID JUDICIAL LIEN
FF-1
VS. NORBERT U. FROST — 8-24-18 [19]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Norbert Frost for the sum of $63,075.89 on November 3, 2011. The abstract of judgment was recorded with Solano County on February 23, 2012. That lien attached to the debtor's interest in a residential real property in Vallejo, California. The debtor asks for avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1).

The respondent's opposition is not well-taken.

First, the debtor has not misled the court about Mr. Frost's lien. The court does not rely merely on the motion to determine the amount of the lien. The record submitted by the debtor, including the abstract of judgment, clearly says that the lien amount is $63,075.89 (with 10% interest starting 9-4-10). Docket 22, Ex. 4.

Second, the court rejects the contention that the delay in bringing this motion is prejudicial to Mr. Frost. The case was filed on August 12, 2015, the debtor obtained a chapter 7 discharge on November 17, 2015, and the case was closed on November 20, 2015. The case was reopened on August 24, 2018, pursuant to a motion by the debtor filed on that date. Dockets 17 and 18. This motion was filed on August 24, 2018. Docket 19.

Mr. Frost has not cited any authority that the filing of this motion is *per se* prejudicial against him. The only case cited by Mr. Frost from this circuit, ITT Fin. Servs. V. Ricks (In re Ricks), 89 B.R. 73 (B.A.P. 9th Cir. 1988), does not say this. Mr. Frost does not cite Chagolla v. JP Morgan Chase Bank, N.A. (In re Chagolla), 544 B.R. 676, 681 (B.A.P. 9th Cir. 2016), which holds that there are no "time limitation[s] for filing the avoidance motion." "Because Congress has not placed any statutory limitations, nor are there any common law doctrines which draw a time bar, we are persuaded that no arbitrary time limitation exists."

"*Passage of time in itself does not constitute prejudice. See, e.g., In re Chabot, 992 F.2d at 893; In re Costello, 72 B.R. 841, 843 (Bankr. E.D.N.Y. 1987). But delay may be prejudicial when it is combined with other factors.*" In re Bianucci, 4 F.3d 526, 528 (7th Cir. 1993).

Mr. Frost has offered no facts indicative of prejudice he has suffered. His supporting declaration focuses only on the amount of the lien and on the value of the property. See Docket 26. The motion neither alleges nor proves facts to support the assertion that the delay has prejudiced Mr. Frost. See also Docket 25 at 2.

Third, the debtor has provided adequate evidence of the value of the property.

The debtor may testify as to the value of his property because he owns the property. As a lay witness, the debtor's opinion of value for the property can be based on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor has stated in his declaration that in his opinion the value of the property was $378,084 on the petition date. Docket 21 at 1. The debtor's evidence of value satisfies his burden of persuasion on this point.

On the other hand, Mr. Frost's $500,000 opinion of value for the property is inadmissible hearsay.

Mr. Frost is a lay witness who has not been qualified as an expert. See Fed. R. Evid. 701 (prohibiting lay persons from rendering opinions based on scientific, technical, or other specialized knowledge) and 702 (requiring qualification of expert witnesses). His declaration does not qualify him as an expert for the appraisal of real estate. See Docket 26. The facts that Mr. Frost was the debtor's divorce attorney, is familiar with the debtor's assets, including the property, and owns himself a property two blocks away from the subject property, do not make him an appraisal expert.

And, unlike the debtor, he is not an owner of the property. Only the owner of property is competent to state a lay opinion regarding that property. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Even if Mr. Frost were qualified as an expert, his opinion of value would still be inadmissible because he gives no basis for it. The motion says that he "performed market research of comparable sales in the subject property's neighborhood," but there is nothing in the record of what comparable sales were considered and how those sales were analyzed to generate the value for the subject property. See Docket 25 at 3; Docket 26.

Nor is the zillow.com printout admissible. It is inadmissible hearsay. Fed. R. Evid. 801(c), 802. It is also an opinion of value by a website, without the site's data, facts, and methodology underlying the opinion. See Fed. R. Evid. 703. The court cannot tell how zillow.com reached its opinion of value for the property.

While Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria.

The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a participatory site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Even if the zillow.com appraisal were admissible, it is not probative because it gives the property's present value as of August 27, 2018. A debtor's right to avoid a judicial lien on exemption-impairment grounds is determined as of

the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). In this case, the petition date is August 12, 2015, over three years before the zillow.com appraisal date.

The court also does not believe Mr. Frost's $500,000 valuation of the property as of the petition date or end of 2015 because if the property were indeed $500,000, the trustee would have liquidated it for the benefit of the estate. The trustee did not do so. He filed a report of no distribution on September 16, 2015, expressing no interest in the property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $378,084 as of the petition date. Dockets 21 & 22. The unavoidable liens totaled $432,493.91 on that same date, consisting of a mortgage for $412,054.52 in favor of Bank of America and a mortgage for $20,439.39 in favor of Green Tree Servicing. Dockets 21 & 22. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Dockets 21 & 22.

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

4. 17-21973-A-7 JOSE/MARIA PIMENTEL — MOTION FOR ADMINISTRATIVE EXPENSES
GMW-2 — 9-10-18 [167]

Tentative Ruling: The motion will be denied.

The debtors seek approval of an administrative expense claim in the amount of $11,870 for their planting, irrigating, and otherwise cultivating Sudan crop which the chapter 7 trustee eventually sold for $40,000.

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

This case was filed on March 27, 2017 as a chapter 12 proceeding. On June 14, 2017, the court converted the case to chapter 7. The debtors worked on the crop from May 9, 2017 until October 31, 2017.

Initially, the motion is unclear how much of the requested sum represents work performed after the conversion to chapter 7.

To the extent the debtors worked during the chapter 12 portion of the case, they are not entitled to compensation because they were debtors in possession. They were in charge of and working for their own bankruptcy estate. Nothing in the Bankruptcy Code permits debtors in individual reorganization cases to compensation for their services to the bankruptcy estates. On the contrary, the Code prohibits compensation for chapter 12 debtors in possession. "Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330 . . . ." 11 U.S.C. § 1203.

To the extent the debtors worked on the crop after the conversion of the case, they have not demonstrated that their efforts were authorized or even requested by the trustee.

Further, the trustee did not sell the crop for $40,000, as represented by the debtors. The trustee sold the crop for only $8,217.60. She also paid $2,009.62 for utilities. Thus, the debtors demand for $11,870 did not benefit the estate which netted approximately $6,000 from the crop. Section 503(b)(1) has not been satisfied. Accordingly, the motion will be denied.

5. 18-25499-A-7 MICHAEL NEWHARD — MOTION TO AVOID JUDICIAL LIEN
CYB-1
VS. SUNLAN-020105, L.L.C. — 9-18-18 [10]

Tentative Ruling: The motion will be granted in part.

A judgment was entered against the debtor in favor of Sunlan-020105, L.L.C. for the sum of $21,170.44 on July 15, 2014 (total owed presently $29,635.85). The abstract of judgment was recorded with Sacramento County on August 10, 2018. That lien attached to the debtor's interest in a 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 $410,000 as of the petition date. Dockets 1 & 14. The unavoidable liens totaled $387,664.76 on that same date, consisting of a single mortgage in favor of PennyMac. Dockets 1 & 14. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(5) in the amount of $13,000 in Schedule C. Dockets 1 & 14.

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 $9,335.24 of equity to support the judicial lien ($410,000 - $387,664.76 - $13,000) . Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property beyond $9,335.24 and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B) to the extent it exceeds $9,335.24.

FINAL RULINGS BEGIN HERE

6. 18-25102-A-7 NINA YAN — MOTION TO COMPEL ABANDONMENT 9-5-18 [11]
LCL-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 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.

The debtor requests an order compelling the trustee to abandon the estate's interest in her contracts to drive for Uber, Lyft, and Doordash.

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

According to the motion, the business assets include solely the contracts with Uber, Lyft, and Doordash. The contracts have a value of $1 and have been claimed fully exempt in Schedule C. The contracts are personal to the debtor and may be terminated at any time by either party. Given the exemption claim and the "at will" arrangement of the debtor with these companies, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

7. 18-25406-A-7 JAMES BRADLEY — MOTION TO CONVERT CASE 9-4-18 [17]

Final Ruling: This motion for conversion to chapter 13 is moot because the case was dismissed on September 26, 2018. Docket 35.

8. 17-22310-A-7 CAROLINE HEGARTY — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-5-18 [159]
BHS-4

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.

The Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $13,119 in fees (including $400 in estimated additional fees) and $40.68 in expenses, for a total of $13,159.68. This motion covers the period from November 2, 2017 through September 4, 2018. The court approved the movant's employment as the trustee's attorney on November 7, 2017. Docket 102. In performing its services, the movant charged an hourly rate of $395.

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 estate with the evaluation of nonexempt assets, including bank accounts and two limited liability companies, (3) conferring with the estate's accountant about assets and administrative tax implications, (4) negotiating with the debtor about payment of the claims in the estate, (5) communicating with creditors about the payment of claims, (6) preparing and prosecuting a motion to abandon the estate's interest in the limited liability companies, (7) assisting the trustee with the general administration of the estate, and (8) preparing and filing employment and compensation motions.

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

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

9. 18-25524-A-7 RANDY/CAROLYN SHREVE — ORDER TO SHOW CAUSE 9-14-18 [11]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on September 20, 2018. No prejudice has resulted from the delay.

10. 18-20728-A-7 ELIZABETH WILSON
AP-2
JPMORGAN CHASE BANK, N.A. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-6-18 [66]

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 be dismissing the motion as moot, 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 but the absence of the automatic stay will be confirmed.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a 2014 Subaru XV Crosstrek.

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 August 10, 2017, the debtor filed a chapter 13 case (case no. 17-25305). But, the court dismissed that case on January 22, 2018 due to the debtor's failure to make plan payments. The debtor filed the instant case as a chapter 13 proceeding on February 9, 2018. The debtor converted the case to chapter 7 on July 10, 2018. Docket 37. The prior 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 March 11, 2018, 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 March 11, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

11. 18-25530-A-7 TRINDAD/SONJA PEREZ — ORDER TO SHOW CAUSE 9-14-18 [11]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on September 20, 2018. No prejudice has resulted from the delay.

12. 18-25638-A-7 KASSANDRA MALONE — ORDER TO SHOW CAUSE 9-20-18 [16]

Final Ruling: The order to show cause will be discharged as moot.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the case was dismissed on September 24, 2018 due to the debtor's failure to timely file petition documents, making this order to show cause moot.

13. 09-29749-A-7 JOSE BURGOS — MOTION TO AVOID JUDICIAL LIEN 9-7-18 [29]
JALB-2
VS. UNIFUND CCR PARTNERS

Final Ruling: The motion will be dismissed without prejudice because it is not accompanied by a proof of service indicating that the requisite notice of the motion was given.

14. 18-25550-A-7 CLARENCE JOHNSON — ORDER TO SHOW CAUSE 9-14-18 [11]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on September 20, 2018. No prejudice has resulted from the delay.

15. 17-25461-A-7 CINDY CUNNINGHAM — MOTION TO EXTEND TIME 9-4-18 [40]
HSM-6

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 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 asks for a 90-day extension, from September 12, 2018 to December 11, 2018, of the deadline for objecting to the debtor's exemptions.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"*[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental*

schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

The meeting of creditors was concluded on November 15, 2017. Since then, the parties have been stipulating to the continued extension of the time for the trustee to object to the debtor's exemptions. The last stipulation extended the deadline until September 12, 2018. Dockets 37 & 39.

This motion was filed on September 4, 2018, before the expiration of the deadline. Hence, the motion is timely.

Turning to the motion's merits, the debtor has been involved in a lengthy marital dissolution action which has raised some homestead exemption issues that the trustee and the debtor are attempting to resolve. The trustee has been anticipating that the debtor would amend her exemptions, but she has not done so yet. The trustee is seeking the extension to enable continued discussions and eventual resolution of the exemption issues with the debtor. The ongoing settlement discussions between the trustee and the debtor are cause for the requested extension. The deadline for objecting to the debtor's exemptions will be extended to December 11, 2018. The motion will be granted.

16. 18-25163-A-7 MARISA HESS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS. — 9-6-18 [13]

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

The motion will be granted.

The movant, Americredit Financial Services, seeks relief from the automatic stay with respect to a 2012 Dodge Durango. The vehicle has a value of $13,097 and its secured claim is approximately $22,742.

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 September 27, 2018. And, the movant obtained possession of the vehicle pre-petition.

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

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and

prosecution of this motion. 11 U.S.C. § 506(b).

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

17. 18-20577-A-7 RUBEN CALDERON — OBJECTION TO CLAIM
DMW-1
VS. JESSICA MARIE CALDERON — 8-20-18 [22]

Final Ruling: The objection will be dismissed without prejudice because it was not served on the respondent creditor at the address given in the proof of claim (Yasha Rahimzadeh 980 9th St., 16th Floor, PMB 1021 Sacramento, CA 95814). See POC 5; see also Docket 24. See Fed. R. Bankr. P. 2002(g), (h).

18. 16-28083-A-7 STEPHEN LEMOS — MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
DMW-6 — 8-15-18 [116]

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, Douglas Whatley, has filed first and final motion for approval of compensation. The requested compensation consists of $20,069.75 in fees and $387.63 in expenses, for a total of $20,457.38. The services for the sought compensation were provided from December 8, 2016 through the present. The sought compensation represents 41.6 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 $336,395.01 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $20,069.75 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $14,319.75 (5% of the next $950,000 ($286,395.01)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $20,069.75 do not exceed the cap of section 326(a).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3),

unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

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

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interests in vehicles, a dental practice, a vacation home, and a $178,000 promissory note secured by a second deed against the debtor's daughter's home,

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

(5) communicating with the estate's professionals about various issues, including the valuation of estate assets,

(6) reviewing claims,

(7) reviewing pre-petition transfers,

(8) negotiating sales of assets with the debtor (vehicles, real property, promissory note),

(9) reviewing various pleadings and documents,

(10) addressing various tax and accounting 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.