UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 7, 2016 at 10:00 a.m.

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

4, 5, 7, 9

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON NOVEMBER 28, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 14, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 21, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 16-25405-A-7 NICOLE MOSBY
CJO-1
SPECIALIZED LOAN SERVICING, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-17-16 [23]

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

The motion will be granted.

The movant, Specialized Loan Servicing, seeks relief from the automatic stay as to real property in Sacramento, California. The property has a value of $265,000.00 and it is encumbered by claims totaling approximately $350,699.25. The movant's deed is in first priority position and secures a claim of approximately $350,699.25.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on October 6, 2016 and filed a statement of nonopposition to this motion on October 30, 2016.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

2. 16-26316-A-7 JEFFREY SAADI — MOTION TO AVOID JUDICIAL LIEN
SNM-1 — 9-30-16 [10]
VS. SUNTRUST BANK

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Suntrust Bank for the sum of $62,276.46 on September 24, 2012. The abstract of judgment was recorded with Solano County on December 5, 2012. That lien attached to the debtor's residential real property in Vacaville, California. The debtor is asking for avoidance of the lien.

The motion will be denied because the evidence of value for the property is inadmissible. The debtor claims that the property has a value of $575,000, but it bases this assertion on "reviewing similar residences in my area, informing my-self about comparable sales of homes in my neighborhood, and consulting with Coldwell Banker Kappel Gateway Realty and Rapisarda Real Estate." Docket 12 at 2.

The debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). As such, the debtor's testimony cannot be based on scientific, technical or other specialized knowledge. Fed. R. Evid. 701(c). As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible.

And, the letters about the value of the property from Coldwell Banker and Rapisarda Real Estate are inadmissible hearsay. Docket 13; see Fed. R. Evid. 802. The court has no declarations from the agents or brokers who prepared the letters.

3. 16-26316-A-7 JEFFREY SAADI — MOTION TO AVOID JUDICIAL LIEN
SNM-2 — 9-30-16 [15]
VS. MIDLAND FUNDING, L.L.C.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Midland Funding, L.L.C. for the sum of $13,658.05 on August 27, 2013. The abstract of judgment was recorded with Solano County on September 20, 2013. That lien attached to the debtor's residential real property in Vacaville, California. The debtor is asking for avoidance of the lien.

The motion will be denied because the evidence of value for the property is inadmissible. The debtor claims that the property has a value of $575,000, but it bases this assertion on "reviewing similar residences in my area, informing my-self about comparable sales of homes in my neighborhood, and consulting with Coldwell Banker Kappel Gateway Realty and Rapisarda Real Estate." Docket 17 at 2.

The debtor is a lay witness, who has not been qualified as an expert. See Fed. R. Evid. 702 (requiring qualification of expert witnesses). As such, the debtor's testimony cannot be based on scientific, technical or other specialized knowledge. Fed. R. Evid. 701(c). As a lay witness, the debtor's

opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible.

And, the letters about the value of the property from Coldwell Banker and Rapisarda Real Estate are inadmissible hearsay. Docket 18; see Fed. R. Evid. 802. The court has no declarations from the agents or brokers who prepared the letters.

4. 14-26327-A-7 ROSA/WILLIAM DEAL — MOTION TO
MAC-1 — AVOID JUDICIAL LIEN O.S.T.
VS. MOUNTAIN LION ACQUITIONS, INC. — 10-24-16 [27]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor Rosa Deal in favor of Mountain Lion Acquisitions, Inc. for the sum of $10,125.80 on October 21, 2013. The abstract of judgment was recorded with Sacramento County on March 20, 2014. That lien attached to the debtor's residential real property in Elk Grove, 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 $367,875 as of the petition date. Dockets 29 & 30. The unavoidable liens totaled $305,000 on that same date, consisting of a single mortgage in favor of John Schepcoff in the amount of $277,000 and outstanding property taxes in the amount of $28,000. Dockets 29 & 30. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $62,875 in Schedule C. Dockets 29 & 30.

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

5. 16-26628-A-7 IRINA BUCALOV — MOTION FOR
EJS-1 — RELIEF FROM AUTOMATIC STAY
YEHUDA SABAG VS. — 10-19-16 [16]

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

The motion will be granted.

The movant, Yehuda Sabag, seeks relief from the automatic stay as to real

property in Orangevale, California.

The movant is the legal owner of the property, and the debtor's parents, Marek Kowalski and Olga Kowalski, leased it from the movant. The debtor's parents are joint debtors in a separate bankruptcy matter, case number 16-27683-D-7. The debtor, Irena Bucalov, an adult, over the age of 18 years of age, is occupying the property without being a party to the lease. The movant served the debtor's parents with a thirty-day notice to pay or quit on March 30, 2016. The debtor filed this bankruptcy case on October 4, 2016. The movant contends that, pursuant to the provisions of 11 U.S.C. § 362(a), the filing of the debtors' petition operated as an automatic stay against Movant's rights to proceed against the debtor's parents.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. The debtor's tenancy interest in the property terminated upon expiration of the thirty-day notice served on the tenants pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

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

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

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

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

6.	09-20140-A-7 JWR-2	SHASTA REGIONAL MEDICAL CENTER, L.L.C.	MOTION TO APPROVE COMPENSATION OF TRUSTEE 10-7-16 [844]

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

The chapter 7 trustee, John Reger, has filed first and final motion for approval of compensation. The requested compensation consists of $319,036.07 in fees and $1,229.44 in expenses, for a total of $320,265.51. The services for the sought compensation were provided from February 11, 2009 through the present. The sought compensation represents 655.74 hours of services.

The National Labor Relations Board opposes the motion, challenging the inclusion of a $2,415,381.76 disbursement to Medical Properties Trust as basis for the calculation of the trustee's compensation.

Initially, the exhibits referenced by the trustee's reply to the opposition are not part of the record made by the trustee. The court has been unable to find the Exhibits C and D referenced in the reply. Docket 857 at 4.

The court is not convinced that the $2,415,381.76 disbursement to Medical Properties Trust can be part of the base for calculating the trustee's compensation. 11 U.S.C. § 326(a) provides that:

"*In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.*"

In short, the compensation must always be reasonable and the formula prescribed by section 326(a) must be based on "*moneys disbursed or turned over . . . by the trustee*."

This case was filed as an involuntary chapter 7 proceeding on January 6, 2009. In a North Carolina state court litigation by MPT against the debtor, the state court appointed a receiver and issued a preliminary injunction against the debtor on January 7, 2009. The litigation entailed MPT's collection on its claim, secured by the debtor's bank accounts and receivables. The receiver was appointed and directed to take control of the debtor's bank accounts and receivables and pay any proceeds from those to MPT on account of its claim. On January 21, 2009, the receiver turned over to MPT $2,415,381.76 from the debtor.

This court entered the order for relief in the case on February 3, 2009. The trustee was appointed on February 4, 2009. MPT filed an adversary proceeding against the estate and the debtor on July 23, 2009, seeking relief from stay and declaratory relief that its secured claim is valid and enforceable. Adv. Proc. No. 09-2467, Docket 1.

The court denied the trustee's motion to dismiss, noting that "the trustee references only two of the three security agreements between the debtor and MPT" and "the trustee has cited no cases supporting his reading of the statutes." Adv. Proc. No. 09-2467, Docket 21.

On November 5, 2009, the trustee filed an answer to the complaint. Adv. Proc. No. 09-2467, Docket 25. The answer does not contain counterclaims against MPT. Id.

On March 29, 2010, this court issued its ruling approving a settlement of MPT's adversary proceeding. In its ruling, the court noted that "MPT will cap its total recovery on its claims against the estate at $9,720,197," and "MPT will receive $7,250,000 million on the effective date of the settlement, consisting of $2,415,318 [*sic*] already received by MPT," which appears to be a reference to the funds the receiver in the state court litigation transferred to MPT prior to the appointment of the trustee. Adv. Proc. No. 09-2467, Docket 46.

The court sees no meritorious challenge by the trustee against MPT's secured claim. The trustee clearly agreed that MPT was owed at least $9,720,197 and, in any event, much more than the $2,415,381.76 received by MPT prior to the appointment of the trustee. Adv. Proc. No. 09-2467, Docket 46.

The $2,415,381.76 was never disbursed or turned over by the trustee to MPT. The trustee merely acknowledged and sought credit for MPT's receipt of those funds. The trustee would have done nothing different if the January 21, 2009 disbursement of the $2,415,381.76 had taken place prior to the January 6, 2009 case filing date. That is not administration by *disbursement* or *turnover* as

prescribed by section 326(a).

Even if the trustee had challenged the stay violation of the January 21, 2009 $2,415,381.76 disbursement, he had no basis to challenge the merits of MPT's secured claim, at least up to $2,415,381.76.

In this case, then, the challenge of the stay violation and MPT's secured claim did not amount to administration of the $2,415,381.76 disbursed to MPT on January 21, 2009. As such, that sum cannot be considered as basis for calculating the trustee's compensation.

Therefore, the movant will make or has made $7,944,154.01 ($10,359,535.77 - $2,415,381.76) in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $261,574.62 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $47,500 (5% of the next $950,000) + $208,324.62 (3% of the next $6,944,154.01)).

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 compensation of $261,574.62 translates into an hourly rate of approximately $400 for the trustee ($398.9). Such compensation is reasonable. It is consistent with an hourly rate typically associated with the complexity of chapter 11 trustee work, which this chapter 7 case approximates. This case has been unusual in many respects, including, without limitation, that it was initiated by an involuntary petition, it involved a debtor that did not cooperate with the trustee, it involved assets that had been abandoned by the debtor, it involved missing information that impeded the trustee's prompt administration of the estate, and it involved a highly regulated industry, healthcare.

The movant's services included, without limitation:

(1) reviewing many documents pertaining to the case,

(2) meeting with doctors and administrators regarding the takeover by the entity that was to take over the hospital operations,

(3) retaining counsel to assist in the administration of the estate,

(4) reviewing the security agreements of MPT, the largest secured creditor,

(5) assessing outstanding receivables,

(6) assessing the collection of the receivables,

(7) analyzing pre versus post petition receivables,

(8) evaluating the administration of unencumbered assets,

(9) locating and taking control of the debtor's bank accounts,

(10) locating and taking control of the debtor's business records,

(11) retaining professionals to complete and file Medicare and Medical reports,

(12) negotiating agreements with creditors,

(13) reviewing various pleadings and documents prepared by the estate's professionals,

(14) preparing a final report, and

(15) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. Compensation in the amount of $261,574.62 will be approved.

7.	16-25941-A-7 SHERIA JORDAN SW-1 A-L FINANCIAL CORPORATION VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-14-16 [20]

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

The motion will be granted.

The movant, A-L Financial Corp., seeks relief from the automatic stay with respect to a 2015 Jeep Patriot. The vehicle has a value of $11,735.00 and its secured claim is approximately $17,010.73.

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 statement of nonopposition on October 17, 2016. Further, the debtors have not made two pre-petition and two post-petition payments to the movant. This is cause for the granting of relief from stay.

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.

8. 16-24261-A-7 C.C. MYERS, INC.
DNL-10

MOTION TO SELL AND TO APPROVE COMPENSATION FOR BROKER
10-17-16 [241]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $2,450,000 the estate's interest in a real property in Rancho Cordova, California (two buildings on two parcels totaling 6.8 acres) to Malcolm Drilling Company, Inc. The property has a scheduled value of $2 million and it is subject to a senior mortgage in favor of Parker Mortgage Trust in the amount of $1.171 million and a junior claim in favor of Liberty Mutual in the approximate amount of $25 million.

Escrow fees and city transfer taxes will be split evenly with the buyer. The estate will pay for a title policy and the county transfer taxes.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of a 6% real estate commission to Newmark Cornish & Carey's.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

Liberty Mutual consents to the sale and agrees to grant the estate a carve-out of 5% of the net sales proceeds (estimated at approximately $100,000), plus $3,500. The trustee does not expect negative tax consequences for the estate from the sale. The sale will generate some proceeds for distribution to creditors of the estate.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The sale will be approved free and clear of Liberty's claim, given Liberty's consent to the sale. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

9. 16-24699-A-7 CECILIA RAMIREZ
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-16 [13]

Tentative Ruling: The motion will be granted in part.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay with respect to a 2012 Honda Accord. The vehicle has a value of $12,575.00 and its secured claim is approximately $16,310.43.

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 August 18, 2016.

Accordingly, the motion will be granted pursuant as to the estate 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.

As to the debtor, the motion will be dismissed as moot. The debtor received a discharge on October 25, 2016. Accordingly, as to the debtor and the debtor's interest in the vehicle, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2).

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.

FINAL RULINGS BEGIN HERE

10. 16-25804-A-7 PHILIP/MARTHA BEARGEON — MOTION TO COMPEL ABANDONMENT
SNM-1 — 9-1-16 [5]

Final Ruling: The hearing on this motion will be continued to December 5, 2016 at 10:00 a.m.

The hearing on this motion was continued from September 26, 2016, in order for the exemptions objection deadline to pass. Under Fed. R. Bankr. P. 4003(b)(1), "a party in interest [may object to exemptions] . . . within 30 days after the meeting of creditors . . . is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later."

No amendment to Schedule C has been filed and the meeting of creditors concluded on October 24, 2016. The trustee issued a notice of assets. Hence, the exemptions deadline is now November 23, 2016. Given that the November 7 hearing predates the deadline, the court will continue the hearing on this motion to December 5, 2016 at 10:00 a.m.

11. 14-31810-A-7 MAHMOOD DEAN — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
GMR-2 — 10-12-16 [88]

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $4,943.50 in fees and $296.69 in expenses, for a total of $5,240.19. This motion covers the period from September 4, 2015 through October 3, 2016. The court approved the movant's employment as the estate's accountant on September 10, 2015. In performing its services, the movant charged hourly rates of $345 and $365.

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 preparing estate tax returns, analyzing property liquidation tax consequences and assessing taxes on a wage claim.

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

12. 16-25410-A-7 MUBASHER AHMED
MC-1
VS. DISCOVER BANK

MOTION TO
AVOID JUDICIAL LIEN
10-4-16 [19]

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 Discover Bank for the sum of $8,383.55 on March 24, 2016. The abstract of judgment was recorded with Yolo County on July 12, 2016. That lien attached to the debtor's residential real property in Woodland, 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 $253,000 as of the petition date. Dockets 21 & 22. The unavoidable liens totaled $254,471 on that same date, consisting of a single mortgage in favor of Citimortgage. Dockets 21 & 22. The debtor claimed an exemption pursuant to Cal. Civ. Proc. 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).

13. 12-28413-A-7 F. RODGERS CORPORATION
CWC-34
VS. OSCAR J. JOHNSON, III

OBJECTION TO
CLAIM
9-19-16 [1039]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 18, 2012, claimant Oscar Johnson, III filed a proof of claim in the amount of $6,130.80 (claim no. 178-1), all classified as a priority claim under 11 U.S.C. § 507(a)(4), including:

- $1,372.80 in wages,

- $1,014 of vacation pay,

- $3,744 as a penalty.

POC 178.

The trustee objects to the proof of claim, disputing the classification of the claim amount, asking the court to classify the claim, except for $1,382.55, as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*

". . . ."

Although this case was filed on April 30, 2012, because the trustee asserts that the debtor ceased doing business on March 19, 2012, the court calculates the 180 days for section 507(a)(4) purposes to have started on September 21, 2011.

The court will disallow the penalty portion of the claim as priority, as section 507(a)(4) does not provide for penalties to be afforded priority status.

Neither the court, nor the trustee can ascertain when the debtor accrued the vacation pay. The proof of claim contains no supporting attachments pertaining to the vacation pay.

On the other hand, the proof of claim contains documentation establishing that the claimant earned $1,382.55 of wages in February 2012.

Hence, $1,382.55 of the claim will remain as priority and $4,748.25 of the claim ($6,130.80 - $1,382.55) will be reclassified as a general unsecured claim. The objection will be sustained.

14.	12-28413-A-7 CWC-35 VS. OMAR GONZALEZ	F. RODGERS CORPORATION	OBJECTION TO CLAIM 9-19-16 [1044]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral

argument.

The objection will be sustained.

On October 24, 2012, claimant Omar Gonzales filed a proof of claim in the amount of $21,009.69. (claim no. 188-1), all classified as a priority claim under 11 U.S.C. § 507(a)(4). He amended the claim on February 18, 2016, increasing the amount of the claim to $21,500, still classifying all as a priority claim under section 507(a)(4).

The claim includes (in part):

- $3,930.77 in wages earned in February and March 2012,

- $3,653.86 of what appears to be other wages,

- $6,394.25 of vacation pay, and

- $10,961.58 as a penalty.

POC 188.

The trustee objects to the proof of claim, disputing the classification of the claim amount, asking the court to classify the claim, except for the $3,930.77 in wages, as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*

". . . ."

Although this case was filed on April 30, 2012, because the trustee asserts that the debtor ceased doing business on March 19, 2012, the court calculates the 180 days for section 507(a)(4) purposes to have started on September 21, 2011.

The court will disallow the penalty portion of the claim as priority, as section 507(a)(4) does not provide for penalties to be afforded priority status.

Neither the court, nor the trustee can ascertain when the debtor accrued the vacation pay. The proof of claim contains no supporting attachments pertaining to the vacation pay. The same is true with the $3,653.86 in wages.

On the other hand, the proof of claim contains documentation establishing that the claimant earned the $3,930.77 of wages in February and March 2012, within the 180-day period of section 507(a)(4).

Hence, $3,930.77 of the claim will remain as priority and $17,569.23 of the claim ($21,500 - $3,930.77) will be reclassified as a general unsecured claim.

The objection will be sustained.

15. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-36
VS. LUIS RODRIGUEZ — 9-19-16 [1049]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On October 25, 2012, claimant Luis Rodriguez filed a proof of claim in the amount of $6,000 (claim no. 204-1), all classified as a priority claim under 11 U.S.C. § 507(a)(4).

Luis Rodriguez filed an amended proof of claim on October 26, 2012 also in the amount of $6,000, classifying all as a priority claim under section 507(a)(4).

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

"*(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if . . . .*"

Proof of claim number 204 will be disallowed in its entirety as it has been amended and superseded by proof of claim 237. Both proofs of claim are based on the same judgment Mr. Rodriguez obtained against the debtor.

Proof of claim number 237 will be reclassified as a general unsecured claim because the judgment that is basis for the claim does not satisfy section 507(a)(4). It is not sales commissions, wages, salaries, commissions, vacation, severance, or sick leave pay earned by an individual. It is a judgment Mr. Rodriguez obtained against the debtor, entered by San Diego Superior Court. Section 507(a)(4) does not apply to judgments.

And, even if section 507(a)(4) applies to judgments for unpaid sales commissions, wages, salaries, commissions, vacation, severance, or sick leave pay earned by an individual, the judgment in question was entered pursuant to a complaint asserting 14 different causes of action, including, among others, breach of contract and Cal. Bus. & Prof. Code §§ 17200, et seq. claims. Docket

1052. In other words, the court cannot tell what is the basis for Mr. Rodriguez's $6,000 judgment against the debtor. Accordingly, the objection will be sustained.

16. 16-25528-A-7 CURTIS/CHRISTINA ALERIDGE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-3-16 [13]
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, Inc., seeks relief from the automatic stay with respect to a 2016 Dodge Ram. The vehicle has a value of $23,950.00 and its secured claim is approximately $39,550.85.

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 October 18, 2016. Further, the debtors have not made three pre-petition and one post-petition payments to the movant. The debtor is also not maintaining insurance coverage on the vehicle. This is cause for the granting of relief from stay.

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.

17. 12-21930-A-7 KELLY/SHERRY BUTLER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
SCB-7 — 10-7-16 [75]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of

the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,486.16, reduced from $9,990 in fees and $316.16 in expenses. This motion covers the period from January 10, 2016 through the present. The court approved the movant's employment as the trustee's attorney on January 18, 2016. In performing its services, the movant charged hourly rates of $300 and $150.

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 assets of the estate, including a personal injury lawsuit that was not originally listed in the schedules, (2) negotiating a settlement with the debtors about exemption of the lawsuit and exemption of vehicles, (3) negotiating the retention of special counsel to prosecute the lawsuit on behalf of the estate, (4) preparing and prosecuting a motion to approve settlement of the exemption issues with the debtors, and (5) preparing and filing employment and compensation motions.

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

18. 16-23039-A-7 JIMMY/JAZMIN ARIAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
RAS-1 — 9-19-16 [21]
OCWEN LOAN SERVICING, L.L.C. 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, Ocwen Loan Servicing, LLC, seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of $422,000.00 and it is encumbered by claims totaling approximately $517,423.16. The movant's deed is in first priority position and secures a claim of approximately $517,423.16.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the

trustee filed a statement of nonopposition to this motion on October 18, 2016.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

19. 16-26645-A-7 DAVID MANSCH — MOTION TO VACATE DISMISSAL OF CASE
NCK-2 — 10-25-16 [21]

Final Ruling: The motion will be dismissed without prejudice as it was served on October 25, 2016, only 13 days prior to the November 7 hearing, in violation of Local Bankruptcy Rule 9014-1(f)(3), which requires an order shortening time for motions brought on less than 14 days' notice. See also Local Bankruptcy Rule 9014-1(f)(1) & (f)(2). This motion has not been served pursuant to an order shortening time.

20. 16-23549-A-7 VENTON/NOEMI HAMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-2 — 10-3-16 [44]
WELLS FARGO BANK, N.A. VS.

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

The motion will be granted in part and denied in part.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay as to real property in Cottonwood, California.

With respect to the debtor, the property has a value of $221,796.00 and it is encumbered by claims totaling approximately $168,420.87. Costs of sale are not

encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is in first priority position and secures a claim of $168,420.87. This leaves approximately $53,375.13 of equity in the property.

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

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

Once the debtor obtains a discharge, however, the automatic stay expires as a matter of law. See 11 U.S.C. § 362 (c)(2). The debtor received a discharge on September 27, 2016. Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee filed a statement of nonopposition on October 4, 2016. The court concludes that this is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

21.	16-24261-A-7 DNL-9	C.C. MYERS, INC.	MOTION TO ABANDON 10-10-16 [224]

Final Ruling: The hearing on this motion has been continued to November 21, 2016 at 10:00 a.m. Docket 254.

22.	16-25666-A-7 APN-1 BMW BANK OF NORTH AMERICA VS.	THOMAS MALONEY AND ANN THOMAS	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-26-16 [15]

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

The motion will be granted.

The movant, BMW of North America, seeks relief from the automatic stay with respect to a 2011 Mini Cooper. The vehicle has a value of $14,454.00 and its secured claim is approximately $16,037.97.

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 statement of nonopposition on September 29, 2016. Further, the debtors have not made three pre-petition and one post-petition payments to the movant. This is cause for the granting of relief from stay.

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.

23. 16-21683-A-7 GERALDYNE METZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLL-1 — 9-28-16 [29]
U.S. BANK, N.A. VS.

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

The motion will be granted.

The movant, U.S. Bank, N.A., seeks relief from the automatic stay as to real property in Oroville, California. The property has a value of $135,000.00 and it is encumbered by claims totaling approximately $166,835.61. The movant's deed is in first priority position and secures a claim of approximately $166,835.61.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

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

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 not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

24. 16-25898-A-7 MICHAEL/HEATHER GOODWYN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 10-6-16 [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, Santander Consumer USA, Inc., seeks relief from the automatic stay with respect to a 2005 Acura MDX. The vehicle has a value of $10,900.00 and its secured claim is approximately $24,861.31.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the debtors have not made 29 pre-petition and one post-petition payments to the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. The debtor is also not maintaining insurance coverage on the vehicle. This is cause for the granting of relief from stay.

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.

25. 16-21599-A-7 CHRISTOPHER/GLEE WOODYARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 9-14-16 [83]

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, Inc., seeks relief from the automatic stay with respect to a 2012 Dodge Avenger. The vehicle has a value of $8,200.00 and its secured claim is approximately $12,383.09.

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 statement of nonopposition on September 19, 2016. Further, the debtors have not made eight pre-petition and six post-petition payments to the movant. The debtor is also not maintaining insurance coverage on the vehicle. This is cause for the granting of relief from stay.

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.

26. 16-21599-A-7 CHRISTOPHER/GLEE WOODYARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS. — 10-3-16 [98]

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, Inc., seeks relief from the automatic stay with respect to a 2007 Honda Accord. The vehicle has a value of $7,725.00 and its secured claim is approximately $15,265.47.

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 statement of nonopposition on October 7, 2016. Further, the debtors have not made seven pre-petition and seven post-petition payments to

the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

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.