

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

April 24, 2017 at 10:00 a.m.

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**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 MAY 24, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 10, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 17, 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.

April 24, 2017 at 10:00 a.m.

**MATTERS FOR ARGUMENT**

- |    |                                 |               |
|----|---------------------------------|---------------|
| 1. | 13-35308-A-7     DOROTHY PARENT | MOTION TO     |
|    | HCS-10                          | EMPLOY        |
|    |                                 | 3-31-17 [421] |

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

The trustee requests approval to employ Ronald Nakano of Coldwell Banker as a real estate broker for the estate. Mr. Nakano will assist the estate with the valuing, marketing and potentially listing the sale of:

- 78 parcels of land in Crescent City, California;
- 680 acres of land in Litchfield, California;
- six lots of land in Lake County, California;
- seven lots of land in Roseville, California; and
- one vacant lot of land in Eden Roc, California.

To value, market, and list the properties, the trustee seeks to compensate Mr. Nakano at \$100 an hour, with reimbursement of reasonable and necessary costs.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court cannot grant the motion because it provides for a vague and ambiguous compensation arrangement. It states: "However, Mr. Nakano's efforts may result in a sale of one of the Properties and, in that case, it may be more appropriate to compensate Mr. Nakano on a commission basis or some blended basis." Docket 421 at 4. In other words, Mr. Nakano will be compensated at \$100 an hour, unless a property sells, at which time he *may be* compensated with an *unidentified* commission rather than the hourly rate.

Yet, the motion does not say when this change in the terms of compensation will be made, does not say who will decide the change, and does not say how it will be decided that Mr. Nakano is entitled to a commission rather than an hourly rate.

Employing someone at an hourly rate to value and market real property may be reasonable under certain circumstances. Yet, employing them at an hourly rate to sell real property is unusual.

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|----|-------------------------------|--------------|
| 2. | 14-24008-A-7     CALVIN CHANG | MOTION TO    |
|    | HCS-3                         | SELL         |
|    |                               | 3-20-17 [53] |

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

The chapter 7 trustee requests authority to sell to the debtor the estate's interest in a state court employment discrimination lawsuit by the debtor against the Regents of the University of California, for \$20,000. The sale is subject to all liens, encumbrances, interests, or rights against the lawsuit. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The Regents oppose the motion, complaining that:

- the trustee has rejected the Regents' \$25,000 offer to purchase the lawsuit free and clear of the liens;
- the trustee should be selling the lawsuit free and clear of the liens of the estate's special counsel, the IRS, and the FTB because that is how the Regents want to overbid for the lawsuit;
- it is in the best interest of the Regents that the sale be free and clear of the liens because the Regents do not want to pay or litigate the liens;
- in any event, the liens are invalid and the court should force a sale free and clear of the liens; by not accepting the Regents' offer, the trustee is not acting in good faith;

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

The debtor has claimed a \$12,089 exemption in the lawsuit. Although he expects a large recovery from the lawsuit if he prevails – up to \$1 million according to him – the debtor already lost the case at the trial court, which awarded \$72,957.51 in attorney's fees to the Regents against him.

The debtor appealed the trial court's judgment to the California Court of Appeal on April 18, 2014, the same day he filed this bankruptcy case.

In August 2014, the trustee retained the attorneys who represented the debtor at trial to prosecute the appeal. The attorneys were employed on a one-third contingency compensation arrangement.

The trustee learned later that the debtor's claims in the lawsuit are encumbered by an IRS lien for \$17,544.86 and an FTB lien for \$22,677.52. The trustee has been unsuccessful to convince the IRS to release its lien on the lawsuit.

The appeal has not been briefed and the trustee believes that, at best, prevailing on appeal would send the case back down for retrial, which would entail another several years of litigation. As such, it could easily take several more years for a final outcome in the lawsuit, even if the estate prevails on appeal.

The sale will generate some proceeds for distribution to creditors of the estate. Given that further prosecution of the lawsuit entails significant delay and continual increase in lien amounts and risk of loss in the lawsuit, the sale is in the best interests of the creditors and the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b). The court will waive the 14-day period of Rule 6004(h).

The Regents' opposition makes no sense. It shows a basic misunderstanding of bankruptcy law. First, the standard is not what is in the best interest of the Regents. The standard is whether the sale is in the best interests of the creditors, as a whole, and the estate.

Second, selling the lawsuit subject to the liens is a sound business and legal decision by the trustee. The estate does not have the funds to pay the liens or litigate their validity, assuming it is warranted. And, the court cannot

make the liens magically disappear just because the trustee is selling the lawsuit in bankruptcy.

Third, the trustee has seen nothing that would make him question the validity of the claims to any recovery from the lawsuit. Whether or not the estate's special counsel actually has a lien on the lawsuit is irrelevant, as the trustee has an agreement that he be paid on a contingency fee basis from the proceeds recovered in the lawsuit.

Nor will the court permit the Regents to litigate the validity of the liens on a motion, much less on an opposition to a motion. Fed. R. Bankr. P. 7001(2) requires an adversary proceeding for such litigation.

Fourth, while the \$20,000 purchase price may not be enough to prompt a distribution to general unsecured creditors, given that there appear to be some priority claims in the case, \$20,000 is better than the nothing the trustee is likely to receive even if the estate were to prevail on appeal.

Finally, the Regents' threats of not overbidding at the April 24 hearing on this motion are of no consequence to the above analysis. No one will require the Regents to overbid.

3. 16-28321-A-7 BENJAMIN/BRANDEE AHLSON MOTION FOR  
JHW-1 RELIEF FROM AUTOMATIC STAY  
AMERICREDIT FINANCIAL SERVICES, INC. VS. 3-17-17 [48]

**Tentative Ruling:** The motion will be denied as unnecessary.

The movant, Americredit Financial Services, Inc., seeks relief from stay as to a 2014 VW Jetta vehicle.

However, there is no stay in this case. In its ruling on the debtors' motion for extension of the stay under 11 U.S.C. § 362(c)(3), this court stated: "There is no automatic stay in this case unless one is imposed by the court," given the pendency and dismissal of two prior cases within a year of the filing of this case. Docket 22; see also 11 U.S.C. § 362(c)(4). The court refused to impose the stay in this case, however. Docket 22. And, this motion is not asking for in rem or retroactive relief from stay. See Docket 48.

4. 12-38663-A-7 RAJINDER/RUPINDER GILL MOTION TO  
RWH-2 AVOID JUDICIAL LIEN  
VS. CITIBANK (SOUTH DAKOTA), N.A. 3-20-17 [24]

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

A judgment was entered against debtor Rupinder Gill in favor of Citibank for the sum of \$5,562.36 on October 31, 2011. The abstract of judgment was recorded with Sacramento County on February 8, 2012. That lien attached to the debtor's residential real property in Antelope, California. The debtor seeks avoidance of the lien under section 522(f).

The subject real property had an approximate value of \$184,504 as of the petition date. Dockets 26 & 27. The unavoidable liens totaled \$263,10.55 on that same date, consisting of a mortgage in favor of Coldwell Banker for \$210,411.82 and a mortgage in favor of COO Mortgage for \$52,695.73. Dockets 1, 21, 26, 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C. Dockets 21, 26,

27.

The motion will be denied because the debtor amended Schedule C on March 17, 2017, to add an exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 21. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

5. 17-21573-A-7 DARLINE BELL ORDER TO  
SHOW CAUSE  
4-7-17 [25]

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

The debtor filed an amended master address list on March 24, 2017, but did not pay the \$31 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

6. 11-37795-A-7 PAIGE GERRARD MOTION TO  
GEL-1 AVOID JUDICIAL LIEN  
VS. CAPITAL ONE BANK (USA) 4-5-17 [23]

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

A judgment was entered against the debtor in favor of Capital One Bank for the sum of \$6,665.60 on February 9, 2011. The abstract of judgment was recorded with Nevada County on August 4, 2011. That lien attached to the debtor's residential real property in Truckee, California. The debtor seeks avoidance of the lien under section 522(f).

The subject real property had an approximate value of \$300,000 as of the petition date. Dockets 1, 25, 30. The unavoidable liens totaled \$311,530 on that same date, consisting of a mortgage in favor of Citimortgage for \$286,979 and a mortgage in favor of JPMorgan Chase Bank for \$24,551. Dockets 1 & 25. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Second Amended Schedule C. Dockets 25 & 30.

The motion will be denied because the debtor amended Schedule C on April 5, 2017, to add an exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 30. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

**FINAL RULINGS BEGIN HERE**

7. 12-23807-A-7 DOUGLAS CREECH MOTION FOR  
EMM-1 RELIEF FROM AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON VS. 3-31-17 [112]

**Final Ruling:** The movant has provided only 24 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

8. 14-31810-A-7 MAHMOOD DEAN MOTION TO  
HCS-5 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
3-27-17 [98]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$13,200.50 in fees and \$919.76 in expenses, for a total of \$14,120.26. This motion covers the period from January 16, 2015 through the present. The court approved the movant's employment as the trustee's attorney on January 23, 2015. In performing its services, the movant charged hourly rates of \$90, \$175, \$225, \$275, \$325, and \$345.

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 petition documents and advising the trustee about the recovery of assets, (2) analyzing issues about undisclosed assets, (3) reviewing documents filed in two adversary proceedings involving the debtor, (4) assisting the estate with the sale of vehicles and a real property, (5) preparing and prosecuting motions to sell, (6) responding to an abandonment motion by the debtor, (7) reviewing and investigating information from creditors about the property sought to be abandoned by the debtor, (8) attending various court hearings, (9) advising the trustee about the general

administration of the estate, and (10) 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.

9. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO  
DNL-16 EMPLOY  
3-24-17 [317]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Susan Smith, the new trustee in this case, requests approval to employ Desmond, Nolan, Livaich & Cunningham as counsel for the estate. DNLC was employed by the prior chapter 7 trustee in this case, David Flemmer, who passed away on March 20, 2017. Susan Smith was appointed as a successor trustee to Mr. Flemmer. The proposed employment terms, including DNLC's hybrid compensation arrangement, are the same as laid out in the court November 4, 2013 ruling approving DNLC's employment with Mr. Flemmer.

As such, the court will grant this motion in accordance with its November 4, 2013 ruling, which is incorporated here by reference. See Dockets 220 & 223.

10. 10-49713-A-7 SUSAN HULSEBOSCH MOTION TO  
HCS-7 APPROVE COMPROMISE AND APPROVE  
COMPENSATION OF SPECIAL COUNSEL  
3-20-17 [182]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and the debtor's former spouse, Peter Hulsebosch, resolving the estate's interest in spousal and child support claims of the debtor against Mr. Hulsebosch.

After the trustee prosecuted the claims here, this court abstained. The trustee then retained special counsel to prosecute the claims in state court, where a judgment was entered against Mr. Hulsebosch. As of March 30, 2015, Mr. Hulsebosch owed \$130,573.17 on account of the claims (based on principal as of the petition date plus accrued interest).

Under the terms of the compromise, Mr. Hulsebosch will pay \$112,500 to the estate in full satisfaction of the judgment.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the estimation that the estate would recover only \$84,000 if Mr. Hulsebosch's only valuable asset (his residence) is sold, given that Mr. Hulsebosch may retire at any time to frustrate any garnishment of his wages, and given the inherent costs, risks, delay and inconvenience of further collection efforts by the estate, the settlement is equitable and fair.

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

The motion also seeks compensation approval for the estate's special counsel, Michael Norton. Mr. Norton's employment as special counsel for the estate was approved on June 25, 2013. Docket 53. The requested compensation – of \$20,584.28 in fees and \$776.00 in expenses, for a total of \$21,360.28 – is based on a one-third contingency fee arrangement, with a 45% discount. On the other hand, one-third of the settlement amount is \$37,425.96. The services cover the period from approximately June 2013 through March 2017.

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."

As explained above, the compensation relates to the prosecution of spousal and child support claims against Mr. Hulsebosch, collecting on the resulting judgment, and eventually settling the judgment. Mr. Norton assisted the estate with recovering \$112,500 on account of the claims.

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.

The motion will be granted.



**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$61,600 in fees (reduced from \$112,419.30) and \$4,780.30 in expenses, for a total of \$66,380.30. This motion covers the period from February 18, 2011 through the present. The court approved the movant's employment as the trustee's attorney on February 24, 2011. In performing its services, the movant charged hourly rates of \$90, \$148, \$150, \$175, \$185, \$195, \$225, \$250, \$275, \$295, \$325, \$345.

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 petition documents and assessing estate assets,
- (2) assisting the estate with the recovery of spousal and child support from the debtor's former spouse,
- (3) prosecuting a complaint before this court to recover the support,
- (4) responding to a motion for abstention,
- (5) assisting the estate with the retaining of special counsel to seek recovery of the support in state court,
- (6) taking various actions to enforce the state court judgment,
- (7) negotiating settlement with the debtor's former spouse over the estate's state court judgment for support,
- (8) preparing and prosecuting a motion to approve the settlement,
- (9) preparing and filing stipulations for extension of the time to object to exemptions,
- (10) responding to two abandonment motions,

(11) preparing and prosecuting objections to the debtor's exemptions in the recovered support,

(12) advising the trustee about the general administration of the estate, and

(13) 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.

12. 12-28413-A-7 F. RODGERS CORPORATION MOTION FOR  
ATA-2 RELIEF FROM AUTOMATIC STAY  
DEVCON CONSTRUCTION INC. VS. 3-24-17 [1206]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Devcon Construction, Inc., seeks relief from the automatic stay to proceed in state court with its construction defect claims against the debtor. Recovery will be limited to available insurance coverage, if any.

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

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

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

13. 12-28413-A-7 F. RODGERS CORPORATION MOTION TO  
CWC-52 APPROVE COMPENSATION OF ACCOUNTANT  
3-24-17 [1210]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Grimbleby Coleman, Certified Public Accountants, Inc., accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of \$33,036 in fees and \$0.00 in expenses. This motion covers the period from July 23, 2012 through February 27, 2017. The court approved the movant's employment as the estate's accountant on August 7, 2012. In performing its services, the movant charged hourly rates of \$65, \$90, \$100, \$105, \$110, \$140, \$150, \$165, \$175, \$180, \$200, \$225, \$250, \$275, \$290, \$310, and \$350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing numerous estate tax returns, including multiple state tax returns, (2) advising the trustee about specific tax consequences from certain administrative actions, (3) reviewing the debtor's pre-petition tax returns, (4) preparing payroll tax returns, (5) preparing W-2 statements for 238 former employees of the debtor, (6) communicating with the various tax agencies about notices and the filing of the returns, and (7) assisting the estate with the preparation of the movant's employment and compensation motions.

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

14.	12-28413-A-7     F. RODGERS CORPORATION CWC-53	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 3-24-17 [1216]
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**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Carl W. Collins, Attorney at Law, counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$126,137.75 in fees and \$7,480.52 in expenses, for a total of \$133,618.27. This motion covers the period from May 3, 2012 through the present. The court approved the movant's employment as the trustee's attorney on May 11, 2012. In performing its services, the movant charged hourly rates

of \$90 and \$295.

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 petition and financial documents,
- (2) preparing for and attending the meeting of creditors,
- (3) advising the trustee about various legal issues,
- (4) preparing and prosecuting motion for order limiting notice,
- (5) evaluating the debtor's interest in leases, real property, and numerous personal property assets,
- (6) communicating with creditors about various issues,
- (7) reviewing state court litigation by Wells Fargo Bank, the principal secured creditor, and evaluating a potential motion under 11 U.S.C. § 543,
- (8) communicating at length with landlords about claims and the estate's property at multiple debtor sites,
- (9) preparing and prosecuting motions for the rejection of leases and for the abandonment of assets,
- (10) negotiating settlements with Wells Fargo Bank over the prosecution of avoidance claims and claims against the debtor's principals,
- (11) preparing and prosecuting motions for approval of the settlements,
- (12) preparing demand letters to avoidance claim defendants,
- (13) negotiating settlements of avoidance claims,
- (14) preparing and prosecuting motions for approval of avoidance claim settlements,
- (15) preparing and prosecuting avoidance claim complaints,
- (16) preparing and prosecuting a motion to assign for further litigation some avoidance claims to the receiver for Wells Fargo Bank,
- (17) evaluating an estate class action claim and communicating with counsel prosecuting it,
- (18) searching for other class action litigation involving the debtor,
- (19) researching Wells Fargo Bank's interest in class action claims,
- (20) reviewing and responding, when necessary, to numerous stay relief motions,
- (21) reviewing, conducting discovery on, and responding to motions for administrative claims,

- (22) reviewing and analyzing proofs of claim,
- (23) preparing and prosecuting claim objections,
- (24) communicating with various creditors about their claims,
- (25) preparing and prosecuting motions to pay tax administrative claims, and
- (26) 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.

15. 12-28413-A-7 F. RODGERS CORPORATION MOTION TO  
MDM-2 APPROVE COMPENSATION OF CHAPTER 7  
TRUSTEE  
3-15-17 [1201]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Michael McGranahan, has filed first and final motion for approval of compensation. The requested compensation consists of \$76,191.02 in fees and \$855.53 in expenses, for a total of \$77,046.55. The services for the sought compensation were provided from April 30, 2012 through March 31, 2017. The sought compensation represents 317.20 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 \$1,764,700.77 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$76,191.02 (\$1,250 (25% of the first \$5,000) + \$4,500 (10% of the next \$45,000) + \$47,500 (5% of the next \$950,000) + \$22,941.02 (3% on anything above \$1 million (\$764,700.77)). Hence, the requested trustee fees of \$76,191.02 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. 9<sup>th</sup> Cir. 2012).

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

- (1) reviewing petition documents and analyzing assets,
- (2) conducting the meeting of creditors,
- (3) evaluating the debtor's interest in leases, real property, and numerous personal property assets (inventory, equipment, etc.),
- (4) inspecting estate property at various sites,
- (5) employing professionals to assist the estate in the administration of estate assets,
- (6) communicating with the estate's professionals about various issues,
- (7) reviewing claims, including claims secured by estate assets,
- (8) communicating and negotiating with Wells Fargo Bank, the principal secured creditor, about the administration of certain assets, including causes of action against the debtor's former principals,
- (9) negotiating agreements with creditors,
- (10) administering various litigation on behalf of the estate (avoidance claims, tort claims, a class action claim, etc.),
- (11) negotiating the resolution of estate claims,
- (12) recovering on a substantial tax refund claim,
- (13) reviewing various pleadings and documents prepared by the estate's professionals,
- (14) addressing tax issues,
- (15) preparing final report, and
- (16) 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.

16. 15-29120-A-7 DAVID/CLAIRE SCHOOLEY  
SCB-10

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
3-24-17 [52]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 is \$3,094.73, reduced from \$5,625 in fees and \$124.73 in expenses. This motion covers the period from January 18, 2016 through the present. The court approved the movant's employment as the trustee's attorney on February 2, 2016. In performing its services, the movant charged hourly rates of \$150 and \$300.

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) advising the trustee about the general administration of the estate, (2) preparing and filing stipulations for extension to file exemption objections, (3) negotiating the resolution of a dispute with the debtor about a nearly \$9,000 incentive payment from her employer, (4) preparing and filing motion to approve settlement, 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.

17. 10-49228-A-7 MARIO/NITZE JAIMEZ  
ASF-3

MOTION TO  
APPROVE COMPENSATION OF ACCOUNTANT  
3-17-17 [89]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$2,437.50 in fees and \$119.65 in expenses, for a total of \$2,557.15. This motion covers the period from January 5, 2017 through February 25, 2017. The court approved the movant's employment as the estate's accountant on January 9, 2017. In performing its services, the movant charged an hourly rate of \$375.

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 advising the trustee about the tax implications from settlement payments, assisting the trustee with the preparation of a motion to approve administrative taxes, preparing estate tax returns, and preparing and filing motions to employ and approve compensation.

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

18. 17-21438-A-7      ANDREW CHANEY      MOTION FOR  
BAW-1      RELIEF FROM AUTOMATIC STAY  
SPECIALIZED LOAN SERVICING, L.L.C. VS.      3-27-17 [19]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 dismissed as moot in part.

The movant, Specialized Loan Servicing, seeks relief from the automatic stay as to a real property in Rocklin, California under 11 U.S.C. § 362(d)(1), (d)(2) and 362(d)(4).

The motion will be dismissed as moot to the extent it seeks relief from stay under section 362(d)(1) and (d)(2). The case was dismissed on April 4, 2017, thus automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B).

The court will grant relief under section 362(d)(4), which prescribes that:

*"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

*"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

*"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*



*"(B) multiple bankruptcy filings affecting such real property."*

In November 2006, Rickie Walker borrowed money to purchase the subject property and also pledged the property as collateral for the loan. He defaulted on the loan in February 2008.

On September 18, 2008, Mr. Walker filed a chapter 11 bankruptcy case here (Case No. 08-33310), which case was converted to chapter 7 and then dismissed on August 7, 2009.

On January 25, 2008, Mr. Walker filed another chapter 11 bankruptcy case here (Case No. 10-21656), which case was converted to chapter 7 and then discharged on October 19, 2011.

On February 24, 2015, Mr. Walker filed yet another chapter 11 bankruptcy case here (Case No. 15-21393), which case was dismissed on November 2, 2015.

On October 3, 2016, Mr. Walker filed a chapter 13 bankruptcy case here (Case No. 16-26606), which case was dismissed on October 21, 2016.

On December 2, 2016, Mr. Walker transferred, without permission of the movant, 25% interest in the property to Lawrence Garrett. Docket 22 at 4; Docket 29 at 1.

On December 5, 2016, only three days later, Mr. Garrett filed a chapter 7 case here (Case No. 16-28012), listing the subject property as his address. That case was dismissed on December 23, 2016, 18 days after filing.

On March 3, 2017, Mr. Walker transferred, without permission of the movant, another 25% interest in the property to the debtor in this case. Docket 22 at 4; Docket 29 at 3.

The debtor filed this case three days later, on March 6, also listing the subject property as his address.

This case was dismissed 29 days later, on April 4, due to the debtor not filing schedules, means test statement and statement of financial affairs, among others. Dockets 3 & 31.

The above history of case filings, case dismissals and transfers of the property establish a scheme by Mr. Walker (the original borrower secured by the property) to delay, hinder or defraud the movant in the enforcement of its claim against the property. After four unsuccessful bankruptcy cases, Mr. Walker resorted to the unauthorized transfer of the property to others (including the subject debtor), who filed for bankruptcy within three days of receiving an interest in the property. This scheme involved both multiple bankruptcy filings and unauthorized transfers of the property.

Accordingly, relief under section 362(d)(4) is warranted. The motion will be granted to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

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 movant contends that the value of the property is \$1.15 million, whereas its claim against the property is in excess of \$1.838 million.

To the extent it applies, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

19. 15-22639-A-7 ISRAEL/MARLINE LOPEZ MOTION TO  
HCS-4 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
3-23-17 [48]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$5,967 in fees and \$135.31 in expenses, for a total of \$6,102.31. This motion covers the period from July 13, 2016 through the present. The court approved the movant's employment as the trustee's attorney on September 14, 2016. In performing its services, the movant charged hourly rates of \$175 and \$345.

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 analysis and recovery of the estate's interest in settlements of two personal injury claims originally undisclosed by the debtor, (2) analyzing exemption issues and advising the trustee about objection to the debtor's exemption in the claims, (3) obtaining an extension of the time to object to the debtor's exemption in the claims, and (4) 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.

20. 16-25340-A-7 JEFFREY WICK  
JCK-2  
VS. SYNCHRONY BANK

MOTION TO  
AVOID JUDICIAL LIEN  
1-27-17 [18]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

The motion will be granted.

The court continued the hearing on this motion from March 13, in order for the debtor to provide evidence of his entitlement to an \$175,000 exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3).

However, the debtor amended his Schedule C on March 16, along with serving it on the trustee and all creditors, altering the exemption to \$75,000 under Cal. Civ. Proc. Code § 704.730(a)(1). Dockets 29 & 30.

A judgment was entered against the debtor in favor of Synchrony Bank for the sum of \$3,946.26 on April 15, 2016. The abstract of judgment was recorded with San Joaquin County on June 20, 2016. That lien attached to the debtor's residential real property in Stockton, 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 \$227,000 as of the petition date. Dockets 20 & 1. The unavoidable liens totaled \$186,284 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 20 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Amended Schedule C. Docket 29.

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).

21. 17-21042-A-7 JASON/STEPHANIE BLACK  
APN-1  
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
3-20-17 [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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2014 Dodge RAM vehicle.

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

The petition here was filed on February 21, 2017 and a meeting of creditors was first convened on March 22, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 22.

The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. Docket 1 at 44.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on March 22, 2017, the date of the creditors' meeting.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on March 22, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on March 22, 2017.

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

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

22. 17-20868-A-7 AMELITA DEL MAR MOTION FOR  
JHW-1 RELIEF FROM AUTOMATIC STAY  
DAIMLER TRUST VS. 3-23-17 [17]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2015 Mercedes Benz E350.

The debtor has defaulted under the lease agreement with the movant. She has not made two pre-petition and one post-petition payments under the lease agreement. Nor will the debtor be assuming the lease, according to her amended statement of intention. Docket 15 at 10.

The court also notes that the lease has been deemed rejected, as the trustee did not assume it within 60 days of the February 10, 2017 petition date. See 11 U.S.C. § 365(d)(1) (providing for the 60-day period). No motion for extension of the 60-day period was filed either. The trustee filed a report of no distribution on March 22, 2017. These facts make it unlikely that the trustee will attempt to assert any interest in the lease.

The above is cause for the granting of relief from stay.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

23. 16-28083-A-7 STEPHEN LEMOS MOTION TO  
BHS-2 EXTEND DEADLINE  
3-14-17 [17]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests a 102-day extension, from March 20 to June 30, 2017, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge objection complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was March 20, 2017. This motion was filed on March 14, 2017. Thus, the motion complies with the temporal requirements of the rule.

The trustee requested documents and information from the debtor about his wholly-owned corporation. The trustee has not received all the requested documents from the debtor, including profit and loss statements and checks of the corporation. In addition, the debtor did not appear at his February 14, 2017 meeting of creditors.

As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to June 30, 2017.

24. 10-46689-A-7 JULIUS/MARLYRUS JACKSON MOTION TO  
TJW-1 AVOID JUDICIAL LIEN  
VS. CITIBANK SOUTH DAKOTA N.A. 4-6-17 [24]

**Final Ruling:** The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not served by certified mail. Docket 28 at 2.

If the motion is reset for hearing, the debtor should note that there is a discrepancy between the schedules and the motion concerning the city where the subject real property is located. In the schedules, the city is identified as Vacaville, whereas in the motion papers the city is identified as Vallejo.

25. 17-20189-A-7 CAROL WORTHINGTON MOTION TO  
DAA-1 AVOID JUDICIAL LIEN  
VS. AMERICAN EXPRESS BANK, FSB 3-15-17 [26]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 American Express Bank for the sum of \$20,941.57 on September 21, 2015. The abstract of judgment was recorded with El Dorado County on November 24, 2015. That lien attached to the debtor's residential real property in Placerville, 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 \$450,000 as of the petition date. Dockets 28 & 29, Ex. B at Schedule A. The unavoidable liens totaled approximately \$372,073.44 on that same date, consisting of a single mortgage in favor of Reverse Mortgage Solutions. Docket 29, Ex. A at 4 & 5. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000 in Schedule C. Docket 29, Ex. B at Schedule C.

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).

26.	11-38690-A-7	RAMON/EVA MALDONADO	MOTION TO
	DPR-2		AVOID JUDICIAL LIEN
	VS. FIRST MUTUAL SALES FINANCE		3-27-17 [32]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Ramon Maldonado in favor of First Mutual Sales Finance Corporation for the sum of \$7,568.16 on November 3, 2009. The abstract of judgment was recorded with Solano County on February 9, 2010. That lien attached to the debtor's residential real property in Vacaville, 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 \$130,000 as of the petition date. Dockets 34 & 1. The unavoidable liens totaled \$246,596 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets

34 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100 in Amended Schedule C. Dockets 20 & 34.

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).