UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 5, 2017 at 10:00 a.m.

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

1, 5, 6, 7, 8, 9, 13

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 JULY 3, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 26, 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. 17-23213-A-7 MARIA CASTRO
CPG-1
RIVER CITY INVESTORS, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-22-17 [17]

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, River City Investors, L.L.C., seeks relief from the automatic stay as to real property in Cameron Park, California. The movant purchased the property at a pre-petition foreclosure sale, on February 8, 2017. The movant commenced an unlawful detainer proceeding against the debtor. Trial in the action was set for May 12. The debtor filed the instant petition on May 11.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. 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) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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.

2. 17-22520-A-7 WILMER SCOTT CORPORATION

ORDER TO
SHOW CAUSE
5-23-17 [19]

Tentative Ruling: The case will be dismissed.

The court issued this order to the debtor, via its self-identified representative, Wilmer Scott, to show cause why the case should not be dismissed because the debtor, a corporation, is not represented by an attorney admitted to practice in this court in violation of its rules. See Docket 19.

It appearing that the debtor is a corporation that is unrepresented by an attorney, the case will be dismissed. Local District Rule 183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), provides that "[a] corporation or other entity may appear only by an attorney."

3. 17-22520-A-7 WILMER SCOTT CORPORATION ORDER TO SHOW CAUSE 5-24-17 [21]

Tentative Ruling: The notice of final cure filed May 12 and May 19 will be stricken and the purported money order returned to the sender by the clerk.

The court issued this order to the debtor, via its self-identified representative, Wilmer Scott, to show cause why two notices of final cure filed on May 12 and May 19 (Dockets 18 & 20) should not be stricken from the record and the purported "money order" accompanying the second notice of final cure returned to the sender. See Docket 21.

On May 12, 2017, the debtor filed a Notice of Final Cure Payment. Docket 18. The notice purports to be a representation by a chapter 13 bankruptcy trustee that "the amount required to cure the prepetition default in the claim [of Caliber Home Loans, Inc.] has been paid in full and the debtor[] ha[s] completed all payments under the plan." Docket 18 at 1 and 2. The "[t]otal cure disbursements made by the trustee" are identified as $333,227.90.

The notice is executed by Wilmer Scott for "Wilmer Scott Estate." See Docket 15. It is dated May 11, 2017. The notice attaches a May 9, 2017 Bank of America receipt for a deposit of $333,227.90. The receipt does not say who made the deposit or into whose account was the deposit made.

On May 19, 2017, another Notice of Final Cure Payment was filed. This notice also purports to be a representation from a chapter 13 bankruptcy trustee that "the amount required to cure the prepetition default in the claim [of Wilmer Scott] has been paid in full and the debtor[] ha[s] completed all payments under the plan." The "[t]otal cure disbursements made by the trustee" are identified as $350,000. Similar to the prior notice, this notice has been executed by Wilmer Scott as administrator for "Wilmer Scott Estate." See Docket 15. The notice is dated May 18, 2017.

This second notice is accompanied by a "MONEY ORDER" issued by "THE WILMER SCOTT ESTATE A FOREIGN STATE W\OUT THE UNITED STATES U.N.C.I.T.R.A.L CONVENTION BRYDON WY UCC 1-308, 3-415, 419 TOWN OF SACRAMENTO, CA 95826-9999." The money order is in the amount of $350,000 to the "UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA (CASE# 17-22520-A-7)." The money order is dated April 28, 2017 and is executed also by Wilmer Scott. In other words, the money order has not been issued by any financial institution.

The envelope containing the latter notice and money order identifies the sender as "Mr. Wilmer Scott."

Both notices were given pursuant to Fed. R. Bankr. P. 3002.1(f), which only "applies in a chapter 13 case." Rule 3002.1(f) prescribes that only the chapter 13 trustee "shall file and serve . . . a notice stating that the debtor has paid in full the amount required to cure any default on the claim." Fed. R. Bankr. P. 3002.1(a) & (f).

This is a chapter 7 case, not a chapter 13 case. There is no plan under which the debtor is making payments to creditors.

Even if Rule 3002.1 were applicable in a chapter 7 case, the court does not accept or process payments made in connection with such notices.

Given that this is not a chapter 13 case but a chapter 7 case, given that payments are not being made to creditors pursuant to a plan, given that the representations in the notices are not by a chapter 13 trustee but from a principal or "administrator" of the debtor, and given that the purported "money order" is in payment of a claim, the notices shall be stricken and the purported money order returned to its sender.

4. 15-27322-A-7 WILLIAM MYER — MOTION TO APPROVE SALE
DNL-7 — 5-15-17 [106]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell to the debtor and his wife the estate's interest in:

- real property in Truckee, California (value of at least $895,000),

- a 2007 GMC 2500 truck vehicle (valued at $15,000 to $18,000 by the trustee; valued at $7,000 by the debtor),

- a 2012 Lexus RX350 vehicle (valued at $18,000 to $21,000 by the trustee; community property interest disputed by the debtor and vehicle valued at $0.00),

- a 1987 Mercedes vehicle (valued at $15,000 to $18,000 by the trustee; community property interest disputed by the debtor and vehicle valued at $0.00), and

- two snowmobiles (valued at $8,000 to $10,000 by the trustee; valued at $1,000 by the debtor).

The sale of the real property is for $205,000 (including a credit bid by the debtors of $175,000, representing their exemption in the property), subject to all encumbrances (totaling approximately $800,000, including two mechanic liens for approximately $200,000). If an overbidder prevails at the sale hearing, the debtor and his spouse will turn over the property to the trustee within 30 days of performance by the overbidder.

The sale of the GMC and Lexus vehicles is for $17,900 (including a credit bid by the debtors of $2,900, representing their exemption in the vehicles), plus a concession by the debtor's wife on her separate property claim as to the Mercedes vehicle.

As part of the proposed sale, the debtor and his wife will turn over to the trustee the Mercedes vehicle and snowmobiles.

In addition to seeking authority to sell the estate's interest in the vehicles, the trustee is seeking approval of the transaction as a compromise.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Specifically, the sale will generate $30,000 from the sale of the real property, $15,000 from the sale of the GMC and Lexus vehicles plus the proceeds from the sale of the Mercedes vehicle and snowmobiles.

Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

The court will approve the transaction with respect to the vehicles also as a compromise.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the debtor's separate property assertion as to the Lexus and Mercedes vehicles, given that the estate will sell the Mercedes vehicle free of any claims by the debtor and his wife, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement as to the vehicles is equitable and fair.

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

5. 17-23128-A-7 RICHARD/DAWN DESANTIS — MOTION TO COMPEL ABANDONMENT 5-11-17 [7]
GEL-1

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 debtors seek to compel the trustee to abandon the estate's interest in their business, RMD Electric.

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

According to the motion, the business assets include:

— a checking account with $710.97 balance, exempted in full,

— a box trailer with a value of $1,500, exempted in full,

— business tools with a value of $2,000, exempted in full,

— receivables with a value of $1,450, exempted in full, and

— other, miscellaneous interest in the business with a value of $1.00, exempted in full.

Given the exemption claims, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

6. 16-28033-A-7 MARIA NUNEZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE
SCB-7 — 5-8-17 [42]

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

The chapter 7 trustee, Geoffrey Richards, has filed first and final motion for approval of compensation. The requested compensation consists of $2,000 in reduced fees and $0.00 in expenses. The services for the sought compensation were provided from December 10, 2016 through May 3, 2017. The sought compensation represents 10.6 hours of services at an hourly rate of $188.67.

The trustee has brought this motion anticipating that there will be no further administration of the chapter 7 estate, given the debtor's pending motion for conversion to chapter 13.

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 analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interest in real property,

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

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims, including claims secured by estate assets,

(7) reviewing various documents prepared by the estate's professionals,

(8) discussing the debtor's conversion plans with counsel, and

(9) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services

rendered in the administration of this estate. The requested compensation is reasonable. It will be approved.

However, the court will deny the request that the compensation be approved "on a priority basis before other administrative claims." The court sees no basis for such relief in the motion. The expense is entitled to the priority set by 11 U.S.C. § 507(a).

7.	17-20337-A-7 MKJ-2 VS. PERSOLVE, L.L.C.	TOBY CRIGLER	MOTION TO AVOID JUDICIAL LIEN 5-15-17 [26]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtor in favor of Beneficial Financial, Inc. for the sum of $16,546.18 on November 21, 2012. The abstract of judgment was recorded with Sacramento County on September 23, 2013. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $315,000 as of the petition date. Dockets 28 & 29. The debtor holds an one-half joint tenancy interest in the property. The unavoidable liens against the property totaled $230,909 on that same date, consisting of a single mortgage in favor of Ocwen. Dockets 28 & 29. The aggregate equity in the property, after accounting for the mortgage claim, is $84,091. The debtor's interest in the equity is one-half or $42,045.50. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000 in Schedule C. Dockets 28 & 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 his interest in the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8.	14-20142-A-7 SCF-2	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 5-15-17 [85]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee has filed on behalf of Ryan, Christie, Quinn & Horn, accountant for the estate, a first and final application for approval of compensation. The requested compensation consists of $5,510 in fees and $204.34 in expenses, for a total of $5,714.34. This motion covers the period from March 30, 2017 through May 15, 2017. The court approved the movant's employment as the estate's accountant on April 11, 2017. In performing its services, the movant charged hourly rates of $175 and $250.

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 prior tax returns, (2) preparing numerous letters to taxing authorities, (3) preparing 2014, 2015, 2016 and 2017 estate tax returns, (4) reviewing estate financial records, (5) discussing tax issues with the trustee, and (6) assisting the trustee in the preparation of the 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.

9.	14-20142-A-7 SCF-3	NARVELL HENRY AND MONICA GONZALES HENRY	MOTION FOR ADMINISTRATIVE EXPENSES 5-15-17 [90]

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

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability for the tax period ending on April 30, 2017 tax year as follows: $4,256 to the IRS and $738 to the California Franchise Tax Board.

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

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

This case was filed on January 7, 2014. The tax liability in question was incurred in 2016 and 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

10. 17-22553-A-7 ORA/TERRY LOMBARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
NIM-1 — 5-11-17 [23]
DANNY NIM VS.

Tentative Ruling: The motion will be granted.

The movant, Danny Nim, seeks relief from the automatic stay as to real property in Vallejo, California, based on a pre-petition foreclosure sale.

Motions for relief from stay are summary proceedings, meaning that the court does not finally determine the validity of the movant's claim. Veal v. American Home Mortgage Servicing, Inc., (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

The movant has produced evidence that he purchased the property at a pre-petition foreclosure sale, sometime prior to March 30, 2017, when the deed conveying title was recorded. Docket 25, Coad-Hermelin Decl.; Docket 27. The movant commenced an unlawful detainer proceeding on April 12. Id. The debtor filed the instant petition on April 18.

This is a liquidation proceeding and the movant has established a colorable claim as to the property. 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) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

The debtor's assertion of ownership interest in the property may be litigated in the unlawful detainer action. The court is making no final determination in connection with this motion as to who owns the property.

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.

11. 87-20156-A-7 DALE/ANNA ATKINS — MOTION FOR TEMPORARY RESTRAINING ORDER O.S.T.
87-2153 SDW-6 — 5-30-17 [114]
FIBERGLASS REPRESENTATIVES ET AL V. ATKINS

Tentative Ruling: The motion will be denied.

Dale Atkins, one of the defendants in this adversary proceeding, seeks a temporary restraining order against the enforcement of this court's May 2, 2017 order (Docket 105) authorizing James Barrett, an assignee of the plaintiff Fiberglass Representatives, Inc., to sell real property in Vallejo, California, in order to collect a 1988 judgment.

The stay is requested until June 15, when the court will hear Dale Atkins' motion to avoid the lien of Mr. Barrett and/or determine that the property may not be sold. Dockets 97 and 106.

The motion will be denied as the movant has appealed this court's orders (Dockets 104 and 105) permitting Mr. Barrett's sale of the property and such orders are subject to the *exclusive* jurisdiction of the appellate court.

"*The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time.* Griggs v. Provident Consumer Discount Co., *459 U.S. 56, 58, 103 S.Ct. 400, 74 L. Ed. 2d 225 (1982); [*Marino v. Classic Auto Refinishing, Inc. (In re Marino), *234 B.R. 767, 769 (B.A.P. 9th Cir. 1999)]; 20 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 303.32[1] (3rd ed. 1999). The trial court cannot take actions 'over those aspects of the case involved in the appeal.' Griggs, *459 U.S. at 58, 103 S.Ct. 400.*

"*The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the order on appeal because such supplementation would change the status quo.* McClatchy Newspapers v. Central Valley Typographical Union, *686 F.2d 731, 734-35 (9th Cir. 1982)."*

Hill & Sanford, L.L.P. v. Mirzai (In re Mirzai), 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999).

The doctrine of exclusive appellate jurisdiction prevents this court from adjudicating any stays with respect to the orders authorizing the sale, other than a request for stay pending the appeal. The movant has not requested a stay pending appeal.

Moreover, the movant's motion to avoid a judicial lien, set for hearing on June 15, makes no sense.

A debtor's right to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

Here, however, both the property and judgment against the property post-date the filing of this case. Anna Atkins and Dale Atkins filed the underlying chapter 7 case on January 12, 1987. Sometime during 1988, the Atkins purchased the subject real property. After a two-day trial in October 1988, this court entered a money judgment on November 15, 1988, for $282,000 against Anna Atkins in favor of Fiberglass, which then assigned the judgment to Mr. Barrett. The debt was declared nondischargeable. Anna Atkins filed a notice of appeal. The appeal was dismissed on July 6, 1990. Docket 96 at 1-2.

Given the inapplicability of thepetition date as a reference for determining

the exemption amount, "*the homestead character of the property is determined as of the date of attachment of the judgment lien. For already-owned property, attachment occurs at the time the lien is created. For after-acquired property, attachment occurs on the date of purchase*." SBAM Partners v. Cheng Miin Wang, 164 Cal. App. 4th 903, 908 (2008).

Under Cal. Civ. Proc. Code § 703.050(a):

"*The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.*"

The Atkins purchased the property sometime in 1988 and the judgment was entered on November 15, 1988. While the court has not been informed when the the abstract of judgment was recorded, recordation obviously did not take place before the bankruptcy case was filed because the judgment was not entered until after the case was filed.

The court did not authorize sale of the property based on a judicial lien, much less a lien held by Mr. Barrett. The court permitted Mr. Barrett to sell the property based on a California statute authorizing creditors to hold a surviving spouse liable for debt of the deceased spouse. Docket 96 at 11; Cal. Prob. Code § 13550. Avoiding a lien will not somehow undo an order granting Mr. Barrett's sale application.

The movant's request for lien avoidance is a backdoor attempt to stop the sale of the property. Obliging the movant would be meddling with the exclusive jurisdiction of the appellate court over this court's sale orders. As discussed above, the doctrine of exclusive appellate jurisdiction forbids this.

The movant's request to stop the sale because of Mr. Atkins' exemption claim, also to be heard on June 15, also makes no sense. Mr. Barrett has argued pursuant to Cal. Prob. Code § 13551(c) that he is entitled to one-half of the equity in the property. Based on that argument, the court entered an order permitting Mr. Barrett to sell the property.

In other words, Mr. Atkins' separate property interest in the property, to which his exemption claim applies, is not subject to the levy of Mr. Barrett. Under Cal. Prob. Code § 13551(c), Mr. Barrett is seeking to enforce the judgment only against "[t]he separate property of the decedent," Anna Atkins.

The court has seen no legal authority permitting Mr. Atkins to apply his exemption claim against the separate property interest of Anna Atkins.

Conversely, Cal. Prob. Code § 13554(a) prescribes that "any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse." Thus, Mr. Barrett may enforce the judgment against the separate property interest of Anna Atkins in the same manner as it could have been enforced against her if she were still alive. Her separate property interest, however, cannot be subject to an exemption claim of Dale Atkins. His exemptions may be applied only to his separate property interest.

Finally, even if an exemption of Mr. Atkins is implicated, there is a well-defined procedure under California law for the assertion of an exemption claim against a property that has been levied. Via such procedure, Dale Atkins does not have to make a motion with the court.

Cal. Civ. Proc. Code § 703.030(a) says that "*[a]n exemption for property that is described in this chapter or in any other statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the exemption is waived and the property is subject to enforcement of a money judgment*."

Cal. Civ. Proc. Code § 703.030(b) further says that "*[e]xcept as otherwise specifically provided by statute, property that is described in this chapter or in any other statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment.*"

Cal. Civ. Proc. Code § 703.510 states that:

"*(a) Except as otherwise provided by statute, property that has been levied upon may be claimed to be exempt as provided in this article.*

"*(b) If property that is exempt without making a claim is levied upon, it may be released pursuant to the exemption procedure provided in this article.*"

Cal. Civ. Proc. Code § 703.520(a) prescribes that "*The claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy thereof. The claim shall be made within 10 days after the date the notice of levy on the property claimed to be exempt was served on the judgment debtor.*"

Then, as mandated by Cal. Civ. Proc. Code § 703.540, "*[p]romptly after the filing of the claim of exemption, the levying officer shall serve both of the following on the judgment creditor personally or by mail:*

"*(a) A copy of the claim of exemption.*

"*(b) A notice of claim of exemption stating that the claim of exemption has been made and that the levying officer will release the property unless, within the time allowed as specified in the notice, both of the following are filed with the levying officer:*

"*(1) A copy of the notice of opposition to the claim of exemption.*

"*(2) A copy of the notice of motion for an order determining the claim of exemption.*"

It is then the creditor who has to file a motion with the court, if he opposes the exemption.

"*Within 10 days after service of the notice of claim of exemption, a judgment creditor who opposes the claim of exemption shall file with the court a notice of opposition to the claim of exemption and a notice of motion for an order determining the claim of exemption and shall file with the levying officer a copy of the notice of opposition and a copy of the notice of motion.*"

Cal. Civ. Proc. Code § 703.550.

The motion will be denied.

12. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
MLS-1 ADVANCE INSURANCE PROCEEDS
4-24-17 [416]

Tentative Ruling: The motion will be granted in part.

The movants, Mark Beadleston, Linda J. Clifford, Steven A Francis, Robert D. Kittridge, Richard Farnsworth, Shane Dees and Robert Coupe, officers and/or directors of the debtor, seek prospective and retroactive relief from the automatic stay permitting the debtor's insurer, Chubb Insurance Company, to advance insurance proceeds in three state court actions involving fiduciary duty claims against the movants for conduct committed in their capacity as officers and/or directors of the debtor pre-petition. The advances of insurance proceeds are limited by the terms of the underlying insurance policy agreements.

The court will grant retroactive relief from stay as to four disbursements made by the debtor's insurer on account of the movants' claims. The four disbursements are described in more detail in the latest declaration in support of the motion. Docket 429.

The motion will be granted prospectively only as to insurance proceeds that are not property of the estate. Generally, insurance proceeds are not property of the estate. Yet, the motion states "[t]o the extent the proceeds of the [p]olicy is [*sic*] property of the [d]ebtors' estates [*sic*], the [c]ourt should approve the [o]rder and allow [the insurer] to advance the [i]nsurance proceeds." Docket 416 at 4.

The movants have not established basis for the advance of proceeds that are property of the estate. There is no evidence of insurance proceeds that are property of the estate. See 11 U.S.C. § 362(d)(2).

By granting relief from stay, the court is not determining the propriety of the disbursements made or to be made by the debtor's insurer.

No fees and costs are awarded because the movants are not over-secured creditors. See 11 U.S.C. § 506.

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

The court will strike Gary Janco's joinder to the motion. Docket 421. The civil and bankruptcy rules do not allow for the joinder of parties to motions or oppositions to motions.

13. 15-23164-A-7 JF MCCRAY PLASTERING, MOTION TO
DNL-7 INC. APPROVE COMPROMISE
4-18-17 [69]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from May 22, in order for the movant to supplement the record. The movant has filed additional pleadings in support of the motion. An amended ruling from May 22 follows below.

The trustee requests approval of a settlement agreement between the estate and

Shawn McCray, the debtor's former principal, resolving the estate's interest in proceeds from a receivable belonging to the debtor, some of which proceeds ($266,977.28) were transferred to Mr. McCray and were used by him in part to fund an IRA and pay off an obligation secured by his interest in real property in Citrus Heights, California.

Mr. McCray received $266,977.28 on account of the receivable from the debtor's general contractor at a community college project. The general contractor is holding another $36,567 on account of the receivable, pending the approval of this settlement.

Mr. McCray's interest in the real property was subject to an avoidance action by the trustee in his mother's chapter 7 case, pending in Department B. Pursuant to a settlement of that action, the interest of the mother's estate in the real property has been released.

Under the terms of the compromise, the transfer of the debtor's receivable proceeds will be avoided, and the estate will recover the real property (except for a shed and a freestanding bar on the property) and the final proceeds of the receivable held by the general contractor, for the benefit of the estate. Mr. McCray will vacate the real property by May 31, 2017 and the trustee will sell it. The net proceeds from the sale will be distributed as follows: 60% to the estate and 40% to Mr. McCray.

In addition, the trustee will assign all claims of the debtor against Lathrop Construction Associates, Inc. Such claims in include, without limitation, causes of action pertaining to backdating of an Equipment Transfer Agreement between the debtor and Lathrop and pertaining to Lathrop improperly taking title to equipment owned by the debtor. If Mr. McCray chooses to prosecute the claims against Lathrop, the net proceeds from the claims will be divided as follows: 60% to Mr. McCray and 40% to the estate. Mr. McCray may settle the claims against Lathrop without the necessity for consent or authority from the estate. The estate and Mr. McCray will also exchange mutual releases.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. The settlement is equitable and fair given:

— Mr. McCray's evidence in the record that he transferred no funds into the IRA,

— the disabilities of both Mr. McCray and his spouse,

— that Mr. McCray has not worked for over two years,

— the trustee's recovery and eventual sale of the real property,

— that the trustee expects to recover for the estate at least approximately $155,000 from the sale of the property (60% of at least $258,500 in net sales proceeds),

— that the $155,000 figure approximates the amount Mr. McCray used to pay off the loan secured by the real property ($152,170.73),

— the estate's sharing in proceeds from potential prosecution of the claims against Lathrop by McMCray, and

— the inherent costs, risks, delay and inconvenience of further litigation.

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

Finally, the court rejects the opposition of Lathrop Construction Associates, Inc. It makes no sense. The subcontract agreement between the debtor and Lathrop prohibits solely the assignment of "this SUBCONTRACT" and "any amounts due or to become due hereunder." Docket 74 at 2. The agreement does not prohibit the assignment of causes of action brought pursuant to the agreement. The court sees nothing in the opposition prohibiting the debtor or the trustee from transferring as part of a settlement or as part of a sale of a cause of action arising from the agreement.

The quoted language in the agreement is the boiler plate language prohibiting parties from assigning performance and receipt of funds due under the agreement. The trustee is not assigning performance and/or receipt of funds under the agreement. The agreement is no longer being performed. It has been terminated, rightfully or wrongfully. The debtor filed this chapter 7 bankruptcy case on April 17, 2015, over two years ago, and it has not been operating. The trustee is transferring causes of action arising from the agreement between the debtor and Lathrop. The trustee does not need permission from Lathrop to transfer causes of action against Lathrop.

The transfer of the claims against Lathrop to Mr. McCray has nothing to do with the assumption and assignment of executory contracts under 11 U.S.C. § 365 either. The agreement between the debtor and Lathrop is far from executory. As mentioned above, it terminated long ago.

Nor is the trustee transferring the causes of action against Lathrop under 11 U.S.C. § 363(f). Section 363 is implicated only in the event of a sale. This is not a sale. Even if it were, the trustee has not invoked section 363(f). The transfer of the causes of action is not free and clear of anything. It is subject to any encumbrances and/or defenses Lathrop might have to the claims.

FINAL RULINGS BEGIN HERE

14. 16-22503-A-7 EMBRY FANTOZZI — OBJECTION TO CLAIM
MOH-3
VS.CAPITAL ONE BANK (USA), N.A. — 4-24-17 [83]

Final Ruling: The objection will be dismissed as moot because the claimant voluntarily withdrew its proof of claim on May 25, 2017.

15. 17-22706-A-7 LEA/AARON BOYCE — ORDER TO SHOW CAUSE
5-19-17 [33]

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

This order to show cause was issued because the debtor filed an Amended Master Address List on May 5, 2017, but did not pay the $30 filing fee. However, the court granted a waiver of the filing fee on May 22, 2017. Docket 38.

16. 12-23807-A-7 DOUGLAS CREECH — ORDER TO SHOW CAUSE
5-12-17 [134]

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

This order to show cause was issued because The Bank of New York Mellon filed a motion for relief from stay on April 28, 2017, but did not pay the $181 filing fee. However, the bank paid the fee on May 23, 2017. No prejudice has resulted from the delay. The motion is set for hearing on June 5.

17. 12-23807-A-7 DOUGLAS CREECH — MOTION FOR RELIEF FROM AUTOMATIC STAY
EMM-2
THE BANK OF NEW YORK MELLON VS. — 4-28-17 [124]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will be dismissing the motion as moot, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Truckee, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other

than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On December 8, 2011, the debtor filed a chapter 13 case (case no. 11-48476). But, the court dismissed that case on February 24, 2012 due to the debtor's failure to make plan payments and turn over documents to the trustee. The debtor filed the instant case on February 28, 2012. The prior chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on March 29, 2012, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 29, 2012, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

18. 10-49713-A-7 SUSAN HULSEBOSCH — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
JES-2 — 4-20-17 [196]

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.

James Salven, C.P.A., accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,325 in fees and $167.54 in expenses, for a total of $2,492.54. This motion covers the period from March 11, 2017 through April 19, 2017. The court approved the applicant's employment as the estate's accountant on May 15, 2015. In performing its services, the applicant charged an hourly rate of $250.

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, among other things, the preparation of estate tax returns and the

preparation of tax determination letters to the tax authorities.

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

19. 16-27413-A-7 TOCCARA COATS — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1
EXETER FINANCE CORP. VS.
5-8-17 [22]

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

The motion will be dismissed as moot.

The movant, Exeter Finance, seeks relief from the automatic stay with respect to a 2014 Toyota Prius 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 November 8, 2016 and a meeting of creditors was first convened on December 7, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 7, 2016. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so within the time allotted. 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 January 6, 2017, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on January 6, 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.

20. 17-22018-A-7 LOUISE GONSALVES — MOTION FOR RELIEF FROM AUTOMATIC STAY
BPN-1
AIR FORCE FEDERAL CREDIT UNION VS. — 4-24-17 [10]

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

The motion will be dismissed as moot.

The movant, Air Force Federal Credit Union, seeks relief from the automatic stay with respect to a 2011 Chevrolet Equinox vehicle.

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

R. Bankr. P. 1019(1)(B).

The petition here was filed on March 28, 2017 and a meeting of creditors was first convened on April 26, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 26. The debtor filed a statement of intention on the petition date, not even listing the vehicle in the statement.

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 filed a statement of intention on the petition date, she did not list the vehicle in it. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on April 26, 2017, the date of the meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on April 26, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on April 26, 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.

21. 17-20420-A-7 BEN/CHRISTINA HIGA — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 5-3-17 [21]
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 in part and dismissed in part as moot.

The movant, U.S. Bank, N.A., seeks relief from the automatic stay as to real property in Stockton, California.

Given the entry of the debtor's discharge on May 11, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $267,871 and it is encumbered by claims totaling approximately $281,537. The movant's deed is the only encumbrance against the property.

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 March 16, 2017.

Thus, the motion will be granted as to the estate 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.

22. 17-21222-A-7 DENNIS BIRD — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 4-26-17 [15]
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 South Lake Tahoe, California. The property has a value of $380,000 and it is encumbered by claims totaling approximately $508,557. The movant's deed is the only encumbrance against the property.

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 May 12, 2017.

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.

23. 16-28033-A-7 MARIA NUNEZ
SCB-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
5-8-17 [49]

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 $3,556.35, reduced from $4,410 in fees and $106.35 in expenses. This motion covers the period from February 1, 2017 through April 25, 2017. The court approved the movant's employment as the trustee's attorney on February 7, 2017. In performing its services, the movant charged an hourly rate of $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) reviewing assets of the estate, (2) communicating with creditors secured by the debtor's real property, (3) resolving claim issues as to the real property, (4) advising the trustee about the general administration of the estate, 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.

24. 16-28033-A-7 MARIA NUNEZ
SCB-6

MOTION TO APPROVE COMPENSATION OF REALTOR
5-8-17 [56]

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.

Bob Brazeal of Remax Executive, real estate broker for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $357.50 in fees and $0.00 in expenses. This motion covers the period from February 3, 2017 through February 10, 2017. The court approved the movant's employment as the trustee's real estate broker on February 27, 2017. The requested compensation is based on a $110 hourly rate for advisory services.

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 assisting the trustee with research of the public record about real property, conducting a physical inspection of the property, and reviewing comparables to assess the value of the property.

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

approved.

25. 16-28033-A-7 MARIA NUNEZ — MOTION TO CONVERT CASE 5-2-17 [37]
TOG-1

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

The motion will be granted.

The debtor requests conversion from chapter 7 to chapter 13.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

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

The court has reviewed the record and concludes that the debtor is not seeking the conversion for an improper purpose or in bad faith and there is no cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c).

The debtor has $1,425 in regular monthly net income. Docket 39, Schedule J. The income appears to be regular as it is generated by the debtor's employment as a pre-school associate, a job she has held for 14 years. Docket 39, Schedule I.

And, the debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount is $207,892.88) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount is $60,023). Given the foregoing, the court concludes that the debtor is eligible for chapter 13 relief as prescribed by Marrama. The motion will be granted.

The debtor shall file with the court the Amended Schedules I and J that are now only attached as exhibits to the motion. See Docket 39.

26. 16-23455-A-7 GRETCHEN GALLOWAY
JCW-1
THE BANK OF NEW YORK MELLON VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-5-17 [36]

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, The Bank of New York Mellon, seeks relief from the automatic stay as to real property in Live Oak, California. The property has a value of $225,000 and it is encumbered by claims totaling approximately $280,502. The movant's deed is in first priority position and secures a claim of approximately $225,132.

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 April 5, 2017.

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.

27. 17-21776-A-7 JEAN BLACKBURN
PPR-1
CARRINGTON MORTGAGE SERVICES, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-26-17 [12]

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, Carrington Mortgage Services, L.L.C., seeks relief from the automatic stay as to real property in Klamath Falls, Oregon. The property has a value of $74,928 and it is encumbered by claims totaling approximately $81,932. The movant's deed is the only encumbrance against the property.

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 April 25, 2017 and also has filed a non-opposition to this motion. 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 foreclosure sale and to obtain possession of the subject property following sale. 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 not be waived.

28. 16-26792-A-7 JOSHUA TOLMAN
TJS-1
EXETER FINANCE CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-26-17 [18]

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 dismissed as moot in part.

The movant, Exeter Finance, seeks relief from the automatic stay with respect to a 2010 Nissan Altima.

Given the entry of the debtor's discharge on March 20, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the vehicle has a value of $5,874 and its secured claim is approximately $10,990. Docket 21.

The court concludes that there is no equity in the vehicle 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 non-opposition to the motion.

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

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

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