UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 27, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 1, 7, 8 and 9.

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions or objects to the tentative ruling. If you wish to oppose the motion or otherwise be heard, please so advise Judge McManus. Please do not identify yourself or explain the nature of your opposition. If anyone wishes to be heard, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion or object to the proposed ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 24, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 10, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 17, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE

NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 18-24507-A-7 ERIC/JESSICA CHERNOFF — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 8-3-18 [9]
MECHANICS BANK VS.

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, Mechanics Bank, seeks relief from the automatic stay with respect to a 2012 Ford Explorer. The movant has produced evidence that the vehicle has a value of $12,725 and its secured claim is approximately $18,165.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. The debtor is also not maintaining insurance coverage on the vehicle.

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

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

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

2. 15-27322-A-7 WILLIAM MYER — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-2 — 7-25-18 [173]
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion will be denied in part and dismissed in part as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Truckee, California.

Given the entry of the debtor's discharge on December 22, 2015, 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 $750,000 and it is encumbered by claims totaling approximately $611,893. The movant's deed is in second priority position and secures a claim of approximately $219,713. This leaves approximately $138,106 of equity in the property.

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

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

The movant has an equity cushion of approximately $138,106. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee concludes administration of the estate or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The motion will be denied as to the estate.

3. 18-23630-A-7 ALEKSANDR/DIANA SAPRYKIN — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 8-6-18 [25]
AMERICAN HONDA FINANCE CORP. VS.

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 debtors, 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 dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2016 Honda CBR600 vehicle.

As to Diana Saprykin, 11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the

date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on June 11, 2018 and a meeting of creditors was first convened on July 18, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 11. 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. And, no 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 as to Diana Saprykin on August 17, 2018, 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 August 17, 2018 as to Diana Saprykin.

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.

As to Aleskandr Saprykin, the analysis is different. 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 March 11, 2017, debtor Aleskandr Saprykin filed a chapter 13 case (case no. 17-21593). But, the court dismissed that case on June 6, 2018 upon the debtor's dismissal motion. Aleskandr Saprykin filed the instant case, along with Diana Saprykin, on June 11, 2018. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property with respect to Aleskandr Saprykin on July 11, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety as to Aleskandr Saprykin, with respect to the subject property on July 11, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

4. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — MOTION TO SELL FREE AND CLEAR OF LIENS
BHS-2 — 6-5-18 [86]

Tentative Ruling: The hearing on this motion will be continued.

The chapter 7 trustee requests authority to sell for $50,000 the estate's interest in any and all claims by the debtors to an inheritance of a real property located in Taiwan to Hui-ming Chang. As further consideration for receiving interest in the claims, the buyer has agreed to withdraw his $38 million proof of claim against the estate.

The trustee also asks:

— for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h),

— for a good faith finding under 11 U.S.C. § 363(m), and

— that the sale be free and clear of any and all interests, rights, claims, or encumbrances of anyone, including the debtors', under 11 U.S.C. § 363(f).

The trustee also asks that the transaction be approved as a compromise between the estate and Mr. Chang.

The debtors filed this chapter 7 case on December 17, 2010. The trustee issued a report of no distribution on February 7, 2011. The court entered the debtors' discharge on March 28, 2011. The case was closed on April 1, 2011.

On July 28, 2016, the debtors filed a request to reopen the case in order to amend their schedules to add an asset on Schedule B exempt on Schedule C. Dockets 27 & 28. The case was reopened on July 28, 2016. Docket 30. The new asset was described as "[p]otential inheritance in Taiwan property." Docket 60. The debtors exempted $20,000 of this asset pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). Id. The court reappointed a chapter 7 trustee on October 26, 2016. Dockets 53 & 58. The trustee issued a notice of assets on November 29, 2016. The claims bar date was set for March 2, 2017. Docket 61. Only two proofs of claim have been filed. The buyer filed a proof of claim for $38 million on February 24, 2017. POC 1-1. The Golden 1 Credit Union filed a proof of claim for $14,500. POC 2-1.

The underlying dispute in Taiwan involves the following alleged facts. Ke De-sheng, the father of debtor Momotaka Saiyo, passed away in September 1999. Ke-Chen Xing-jia is the wife of Ke De-sheng and mother of debtor Momotaka Saiyo. Momotaka Saiyo has two siblings, a brother and sister. Ke-Chen Xing-jia sold an interest in an unfinished luxury condo development in Taiwan. Starting in 2009, Ke-Chen Xing-jia entered in series of agreements with Hui-ming Chang, the buyer here, for the sale of various portions of the real property in question.

The debtors contend that false claims to the property by Ke-Chen Xing-jia did not come to light until the latter part of 2011, when the local prosecutor in Taiwan charged Ke-Chen Xing-jia with tax evasion. This happened after the debtors had already received their bankruptcy discharge and the bankruptcy case had closed.

Purportedly, it was then that debtor Momotaka Saiyo and his two siblings realized that they had an interest in the real property by virtue of an inheritance from the father. They then asserted interest in the property by initiating litigation in Taiwan against Mr. Chang. Upon the passing of Ke De-sheng, the real property was to be owned in equal shares by Ke-Chen Xing-jia, debtor Momotaka Saiyo and his two siblings.

Mr. Chang disputes the foregoing, contending that he received good title to the property from Ke-Chen Xing-jia. He also complains that the challenges to his interest in the property surfaced only after he paid $38 million to satisfy, among others, tax liabilities on the property and a voluntary encumbrance. Most recently, Mr. Saiyo's challenge of Mr. Chang's ownership interest in the property was dismissed in a trial court in Taiwan. Mr. Saiyo is currently appealing the dismissal of his case against Mr. Chang.

While many things are not clear in this case, it is clear that the stakes for both Mr. Saiyo and Mr. Chang in the Taiwanese legal system are in the millions of dollars.

As representative of the estate, the trustee "owes a fiduciary duty to debtor and creditors *alike* to act fairly and protect their interests." Martin-Trigona v. Ferrari (In re Whet, Inc.), 750 F.2d 149 (1st Cir. 1984); see also In re Haugen, No. 04-00034, 2008 WL 1995359, at *5 (Bankr. D. Hawaii May 6, 2008) & In re Suntastic U.S.A., Inc., 269 B.R. 846, 849 (Bankr. D. Ariz 2001) (both cases citing Whet favorably).

In this case, only two proofs of claim have been filed, Mr. Chang's $38 million general unsecured claim and a $14,500 general unsecured claim of Golden 1 Credit Union. POCs 1-1 & 1-2.

The court is not convinced though that Mr. Chang is truly a creditor in this

bankruptcy case. His proof of claim is based on "*the Debtors' continuing fraudulent and other wrongful conduct that has caused direct and material harm to the Claimant. Specifically, the Debtors have prevented Claimant from consummating a transaction to acquire and quietly enjoy valuable real property located in Taiwan*." POC 1-1.

However, there are no allegations anywhere in the proof of claim that the debtors engaged in the purported "fraudulent and other wrongful conduct" against Mr. Chang prior to December 17, 2010, when this case was filed. Mr. Chang apparently paid a tax lien of over $10 million, based on a large inheritance tax against the property, in 2010. The debtors filed this bankruptcy case on December 17, 2010. It was not until approximately January 2012, according to the amended complaint by Mr. Chang against the debtors in the district court, attached to Mr. Chang's proof of claim, that Mr. Saiyo started making trouble for Mr. Chang about the property. According to Mr. Chang's own district court complaint, "*[o]n or about January 20, 2012, Mr. Saiyo authorized his elder brother, Fu-Yuan Ko, to file a petition with the Taipei District Court and thereby requested a provisional injunction preventing the completion of the transfer of the Property to Plaintiff.*" POC 1-1, Amended Complaint at 6.

In other words, there are no pre-petition actions of the debtors against Mr. Chang and the property. Conversely, according to Mr. Chang, Mr. Saiyo argued pre-petition that he had not inherited an interest in the property, in his attempt to avert assessment of the inheritance tax. POC 1-1, Amended Complaint at 2-3.

Mr. Chang's claim is a post-petition claim which is not subject to a discharge in this case or payment from the estate. Withdrawal of Mr. Chang's proof of claim, therefore, provides the estate with no value.

Hence, the only claim in the case is that of Golden 1 Credit Union, for $14,500.

Continued litigation to the value of the debtors' claim against Mr. Chang is a waste of time when there is only one claim of $14,500 and modest administrative claims, both of which Mr. Saiyo is willing to pay.

Accordingly, the trustee shall appear at the August 27 hearing on this motion and provide Mr. Saiyo with an estimate of the total administrative expenses. Mr. Saiyo shall pay by a cashier's check for $14,500 plus the estimated administrative expenses no later than October 12. The debtors shall obtain an order from the court disallowing an objection to Mr. Chang's claim no later than October 9. All administrative claimants shall obtain approval of their administrative expenses no later than October 9. The trustee will hold the funds paid by Mr. Saiyo until further order of the court on this motion. The hearing on this motion will be continued to a date after October 12.

5. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — OBJECTION TO CLAIM
DRE-2
VS. HUI-MING CHANG — 8-13-18 [112]

Tentative Ruling: The objection will be dismissed without prejudice because it violates Local Bankruptcy Rule 3007-1(b) and Fed. R. Bankr. P. 3007, which require at least 30 days notice of the hearing on the objection. Here, notice of the objection was given only 14 days prior to the August 27 hearing. The objection was served on August 13. Docket 116.

Further, the notice of hearing asks parties to file written opposition 14 days prior to the hearing, *i.e.*, August 13. This is an impossibility give that notice of the objection was served on August 13. And, for the objecting party to require opposition 14 days prior to the hearing, the objection must have been brought on 44 days' notice, under Local Bankruptcy Rule 3007-1(b)(1).

Finally, the objection was not served on the claimant at the address on the proof of claim to which this objection is directed. The objection was served only at the claimant's counsel's email address. See Docket 116. It was not served at the physical address on the proof of claim. See Docket 114, Ex. 1 at 1.

6. 13-31341-A-7 ROBERT/DOLORES KYLE — MOTION TO AVOID JUDICIAL LIEN
BB-5 — 7-26-18 [42]
VS. BUTTE COUNTY CREDIT BUREAU, INC., AND STANISLAUS CREDIT CONTROL SVCS., INC.

Tentative Ruling: The motion will be granted in part and denied in part without prejudice.

A judgment was entered against the debtors Robert Kyle and Dolores Kyle in favor of Butte County Credit Bureau for the sum of $1,635.06 on October 22, 2004. The abstract of judgment was recorded with Shasta County on December 8, 2004. That lien attached to the debtors' interest in a residential real property in Anderson, California.

A judgment was entered against the debtors Robert Kyle and Dolores Kyle in favor of Stanislaus Credit Control Service, Inc. for the sum of $10,630.81 on December 3, 2012. The abstract of judgment was recorded with Shasta County on February 4, 2013. That lien attached to the debtors' interest in a residential real property in Anderson, California.

The debtors filed this case on August 29, 2013. They received a chapter 7 discharge on December 16, 2013. Dolores Kyle passed away on January 7, 2015. Docket 44. Robert Kyle is seeking avoidance of the two liens against the property.

The motion will be denied as to the lien of Butte County Credit Bureau. The motion does not establish the enforceability of the judgment underlying that lien. The lien based on the October 22, 2004 judgment was extinguished on October 22, 2014 under Cal. Civ. Proc. Code § 683.020, which provides that "*[e]xcept as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) [a]ny lien created by an enforcement procedure pursuant to the judgment is extinguished.*" And, the court does not have a renewal of judgment by Butte County Credit Bureau in the record.

The motion will be granted as to the Stanislaus Credit Control Service lien pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $90,286.56 as of the petition date. Dockets 44, 45, 1. The unavoidable liens totaled $0.00 on that same date. Dockets 44 & 1. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of $90,286.56 in Schedule C. Dockets 44, 45, 1.

Respondent Stanislaus Credit Control Service 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). The motion will be granted in part and denied in part.

7.	18-23043-A-7 JAD-1	GUSTABO VARGAS AND MARIA VARGAS CASTANEDA	MOTION TO COMPEL ABANDONMENT 7-25-18 [14]

Tentative Ruling: The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Manteca, California. The motion contends that the entire equity in the property is exempt.

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

The value of the property is $320,850. The property is encumbered by a single deed of trust in favor of Pennymac Loan Services in the amount of $235,705. The debtors have exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $20,000 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

8.	18-23345-A-7 MET-1 B. LEE VS.	TERRI DAWSON	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-8-18 [22]

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, B. Lee, seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in April 2018. The movant filed an unlawful detainer action against the debtor on May 24, 2018.

The debtor filed this bankruptcy case on May 29, 2018.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from April 2018 onward.

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

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

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

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

9. 18-23252-A-7 GENE/JULIE HASKINS — MOTION TO COMPEL ABANDONMENT 8-4-18 [27]
CK-2

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 request an order compelling the trustee to abandon the estate's interest in their day care business.

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 toys and books. The assets have a value of $250 and have been claimed fully exempt in Schedule C. Given the exemption claim, 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.

10. 18-24673-A-7 CRAIG DIXSON — ORDER TO SHOW CAUSE 8-9-18 [18]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay his petition filing fee, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. The filing fee of $335 was due on July 26, 2018 and has not been paid yet.

11. 16-22482-A-7 TIMOTHY MUNSON — MOTION TO SELL OR TO COMPROMISE CONTROVERSY 6-18-18 [41]
HCS-3

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $15,000 the estate's one-third interest in real property in Lodi, California to Shanon Cabebe. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee further asks for approval of the transaction as a compromise with the buyer Shanon Cabebe, resolving a dispute over the estate's interest in the property.

Shanon Cabebe, the debtor, and a third party purchased the property pre-petition, with each of them owning one-third interest in the property. Shanon Cabebe alleges that he purchased the interests of the debtor (pre-petition) and the third party, but the executed grant deed(s) was lost and never recorded. The trustee contends that he can avoid and recover the transfer of the debtor's one-third interest in the property. The trustee argues that he is a bona fide purchaser for value. See 11 U.S.C. § 544(a)(3).

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

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 sale is "as is," without warranty or representation, and it is subject to any and all encumbrances or liabilities against the property.

The sale will generate proceeds for distribution to creditors of the estate, without the need for further litigation relating to the estate's interest in the property.

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 waive the 14-day period of Rule 6004(h).

The court concludes that the Woodson factors balance in favor of approving the

transaction as a compromise. That is, given the relatively small amount at stake and the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court will approve the transaction as a compromise as well. It is 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.

12. 17-26097-A-7 JANACE LIPPI — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
U.S. BANK, N.A. VS. — 7-20-18 [42]

Tentative Ruling: The motion will be granted in part and dismissed as moot in part.

The movant, U.S. Bank, seeks prospective and in rem relief from the automatic stay as to a real property in Carmichael, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

There is no automatic stay to terminate in this case.

11 U.S.C. § 362(c)(4)(A) provides that (i) "*if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect.*"

On June 29, 2016, the debtor filed a chapter 13 case (case no. 16-24223). That case was dismissed on March 30, 2017 on the trustee's dismissal motion due to default under the chapter 13 plan. On August 9, 2017, the debtor filed another chapter 13 case (case no. 17-25264). That case was dismissed on August 28, 2017 due to the debtor's failure to timely file documents. The debtor filed the instant case as a chapter 13 proceeding on September 13, 2017. When the trustee made a motion to dismiss the case due to default under the chapter 13 plan, the court converted the case to chapter 7 on July 9, 2018.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases. Accordingly, there is no automatic stay to terminate in this case, as the stay did not go into effect upon the filing of the instant case on September 13, 2017. This part of the motion will be dismissed as moot.

Nevertheless, the court will confirm that the automatic stay did not go into effect upon the filing of the instant case on September 13, 2017. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

The court will grant relief under 11 U.S.C. § 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.*"

The three failed chapter 13 cases filed by the debtor from June 29, 2016 through September 13, 2017, and the short time periods between the dismissal and filing of the cases, establish that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, including the movant in the enforcement of its claim against the property. The scheme involves multiple bankruptcy filings, affecting the subject property. The debtor listed the subject property in all schedules she filed in the cases. Relief under section 362(d)(4) is warranted.

Finally, the debtor's opposition to the motion will be overruled. Docket 50. The debtor says only that she opposes the motion, without offering any defenses to the motion. She says that there is equity in the property, and either the trustee or the debtor should be given permission to sell the property to realize the equity. In the alternative, the debtor may cure all arrears on the property prior to the August 27 hearing. As there is no automatic stay in this case, none of the debtor's proposals make sense or are relevant to the merits of the motion insofar is brought under section 362(d)(4).

13. 18-23597-A-7 TERI PATTERSON — MOTION TO DISMISS 7-18-18 [14]

Tentative Ruling: The motion will be conditionally denied.

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on July 18, 2018.

The debtor responds that she did not know of "[her] other court date." She also says that "[g]etting to the Sacramento court is going to be a big challenge" because she is a single mother and works full time. Docket 17.

The meeting has been continued to August 22, 2018 at 11:00 a.m. in Redding, California. The meeting of creditors has always been in Redding, California.

The court will not dismiss the case, given the debtor's parental responsibilities and full time employment on the condition that the debtor attended the August 22 continued meeting.

However, if the case remains pending, the court will order that the deadlines for filing complaints under 11 U.S.C. §§ 523 and 727 and motions to dismiss under 11 U.S.C. § 707 be extended 60 days from the continued meeting date, from September 17 to November 16.

FINAL RULINGS BEGIN HERE

14. 18-22008-A-7 SEN NGUYEN AND EN CU — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-30-18 [15]
AP-1
THE BANK OF NEW YORK MELLON TRUST CO., 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 as moot in part.

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

Given the entry of the debtor's discharge on August 1, 2018, 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 $426,168 and it is encumbered by claims totaling approximately $566,901. Costs of sale are not encumbrances for purposes of the section 362(d)(2) calculations. The movant's deed is in first priority position and secures a claim of approximately $332,847.

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 31, 2018.

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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion.

See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

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

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

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.

15. 18-24355-A-7 EDITH GOMEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 7-26-18 [11]
THE BANK OF NEW YORK MELLON 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, The Bank of New York Mellon, seeks prospective and in rem relief from the automatic stay as to a real property in West Sacramento, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

The court will grant relief under 11 U.S.C. § 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 January 2006, Louis Ramirez and Mona Ramirez borrowed $318,375 to purchase the subject property and also pledged the property as collateral for the loan. The movant holds the loan. The loan is delinquent and the movant has been attempting to foreclose on the property.

On July 8, 2018, Louis Ramirez and Mona Ramirez executed a grant deed transferring a tenancy in common ownership interest in the property for no consideration to Louis Ramirez and the debtor Edith Gomez. Edith Gomez filed this chapter 7 bankruptcy case on July 12, 2018. On July 13, 2018, the movant received notice of the transfer to Edith Gomez and notice of the bankruptcy filing.

The movant did not authorize the transfer to Edith Gomez.

The court also notes that the debtor has not listed her interest in the property in her schedules. See Docket 1, Schedule A/B.

The transfer of the property four days prior to the filing of this case, and subsequent notification of the movant of the transfer and bankruptcy filing, when taken together, establish that the filing of this case was part of a scheme to delay, hinder or defraud creditors, including the movant in the enforcement of its claim against the property. The scheme involves an unauthorized transfer of the property.

Given the timing of the transfer relative to the transferee's instant bankruptcy filing, the transfer was made and bankruptcy filed for the purpose of delaying, hindering, or defrauding the movant in the enforcement of its claim.

Accordingly, relief under section 362(d)(4) is warranted.

Prospective relief from stay will be granted on the same basis under section 362(d)(1) for cause. 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.

The movant has not presented evidence of the value of the property. 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 waived.

16. 15-26663-A-7 JENNIFER TUNISON — MOTION FOR DENIAL OF DISCHARGE OF DEBTOR
UST-1 — 7-6-18 [62]

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 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 U.S. Trustee moves for denial of the debtor's discharge pursuant to 11 U.S.C. § 727(a)(8), which provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

An objection to discharge pursuant to section 727(a)(8) does not require an adversary proceeding. See Fed. R. Bankr. P. 7001(4).

The debtor filed a chapter 7 case, with her spouse, Case No. 10-28763-C-7, on April 6, 2010 and she received a discharge in that case on August 9, 2010. The debtor filed the subject bankruptcy case, Case No. 15-26663, on August 24, 2015, approximately five years and four months after the filing of Case No. 10-28763. Dockets 65 & 66. As the debtor filed the instant bankruptcy case less than eight years after the filing of the bankruptcy case in which she received a discharge, she is not eligible to receive a discharge in the instant bankruptcy case. Accordingly, the motion will be granted.

17. 16-22163-A-7 SYLVIA KINERSON — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
ADJ-6 — 7-17-18 [134]

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.

Atherton & Associates, L.L.P., accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,675 in fees and $0.00 in expenses. This motion covers the period from August 21, 2017 through May 7, 2018. The court approved the movant's employment as the estate's accountant on September 6, 2017. In performing its services, the movant 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 a tax analysis pertaining to the sale of the estate's interest in a real property and preparation and filing of estate tax returns.

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. 16-22163-A-7 SYLVIA KINERSON — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
ADJ-7 — 7-17-18 [141]

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.

Fores ■ Macko, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $50,820 in fees and $3,113.02 in expenses, for a total of $53,933.02. This motion covers the period from June 15, 2016 through July 11, 2018. The court approved the movant's employment as the trustee's attorney on June 21, 2016. In performing its services, the movant charged an hourly rate of $275.

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) prosecuting an action for avoidance of a real property interest, (2) prosecuting an action to deny the debtor's discharge, (3) prosecuting an action for the partition of the real property, (4) assisting the estate with the sale of the real property, (5) assisting the estate with the sale of a vehicle and a trailer, (6) assisting the trustee with the general administration of the estate, and (7) preparing and filing employment and compensation motions.

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

19. 16-22163-A-7 SYLVIA KINERSON — MOTION TO APPROVE COMPENSATION FOR TRUSTEE
MDM-5 — 7-17-18 [148]

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

The motion will be granted.

The chapter 7 trustee, Michael McGranahan, has filed first and final motion for approval of compensation. The requested compensation consists of $11,510.94 in fees and $238.47 in expenses, for a total of $11,749.41. The services for the sought compensation were provided from April 6, 2016 through August 27, 2018. The sought compensation represents 64.7 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 $165,218.86 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $11,510.94 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $5,760.94 (5% of the next $950,000 ($115,218.86)) + $0.00 (3% on anything above $1 million ($0.00)). Hence, the requested trustee fees of $11,510.94 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

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

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

(1) reviewing petition documents and evaluating assets,

(2) conducting the meeting of creditors,

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

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

(5) communicating with the debtor's former step son about issues involving a real property,

(6) evaluating the debtor's transferred interest in a real property,

(7) prosecuting actions for avoidance of a fraudulent conveyance, denial of discharge, and partition of the real property,

(8) communicating with the debtor about settlement,

(9) selling the real property,

(10) reviewing various pleadings and documents,

(11) addressing various tax and accounting issues,

(12) reviewing claims,

(13) preparing final report,

(14) 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.

20.	18-22268-A-7 RUDOLPH MEZA LKM-1 VS. CAPITAL ONE BANK	MOTION TO AVOID JUDICIAL LIEN 7-16-18 [15]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $4,633.13 on October 15, 2015. The abstract of judgment was recorded with Sacramento County on December 3, 2015. That lien attached to the debtor's interest in a residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $350,000 as of the petition date.

Docket 17. The unavoidable liens totaled $234,095.40 on that same date, consisting of a single mortgage in favor of Ditech Financial, L.L.C. Dockets 17 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Amended Schedule C filed on July 16, 2018. Dockets 13 & 18.

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. 18-22470-A-7 CHRISTOPHER/BRITTNEY LOZINTO — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 7-17-18 [26]
TOYOTA MOTOR CREDIT CORP. 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, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2014 Toyota Prius. The movant has produced evidence that the vehicle has a value of $12,925 and its secured claim is approximately $16,516.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on July 17, 2018 and he has filed a non-opposition to this motion. Also, the debtor has surrendered the vehicle to the movant. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

22. 18-20571-A-13 MARK ENOS
JHW-1
FORD MOTOR CREDIT COMPANY, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-26-18 [102]

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, Ford Motor Credit Company, seeks relief from the automatic stay as to a 2015 Ford F-150 vehicle.

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 March 8, 2017, the debtor filed a chapter 13 case (case no. 17-21520). But, the court dismissed that case on January 6, 2018 upon the debtor's dismissal motion. The debtor filed the instant case as a chapter 13 proceeding on February 1, 2018. The court converted the case to chapter 7 on June 20, 2018. Docket 74. On August 9, 2018, the court reconverted the case back to chapter 13. Docket 114.

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 3, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on March 3, 2018, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

23. 18-23888-A-7 ADAM TRAVALE
JHW-1
DAIMLER TRUST VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-25-18 [14]

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, Daimler Trust, seeks relief from the automatic stay with respect to a leased 2016 Mercedes-Benz C300. The vehicle has a value of $26,642 in Schedule A/B and the outstanding debt under the lease agreement totals approximately $28,974. The debtor also has not made one pre-petition and one post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on July 19, 2018.

The court concludes that 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.