UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 12, 2017 at 10:00 a.m.

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON NOVEMBER 6, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 23, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 30, 2017. 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.

1. 17-24702-A-7 KELLEY ULMER — MOTION TO DISMISS CASE
KJH-1 — 9-8-17 [10]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the U.S. Trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the 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 and the case will be dismissed.

The U.S. Trustee moves for dismissal because no appearance has been made for the debtor at the meeting of creditors held on September 8, 2017.

In addition, the debtor failed to appear at the August 25, 2017 meeting of creditors. The case docket indicates that the trustee continued the meeting of creditors to September 8, giving the debtor another opportunity to appear. However, the debtor did not appear at the September 8 meeting either. Further the docket does not reflect that the debtor has filed a request for continuance of the meeting of creditors or that the debtor has filed any pleadings explaining his absence from said meetings.

The court concludes that the foregoing has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1). The motion will be granted and the case will be dismissed.

2. 17-23725-A-7 CHRISTOPHER DANIELS — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 9-5-17 [15]
WELLS FARGO BANK, N.A. VS.

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

The movant, Wells Fargo Bank, seeks prospective and in rem relief from the automatic stay as to a real property in 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 June 2006, Tarea Brewer borrowed money to purchase the subject property and also pledged the property as collateral for the loan. The movant eventually acquired interest in the loan.

On May 25, 2017, Ms. Brewer executed a grant deed transferring a tenancy in common ownership interest in the property for no consideration to herself and the debtor. Six days later, on June 1, 2017, the debtor filed this chapter 7 bankruptcy case.

Docket 20, Ex. 6.

Given the close proximity of the transfer of the property to the filing of this case, 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. This scheme involved an unauthorized transfer of the property. Relief under section 362(d)(4) is warranted.

As to prospective relief from stay, given the entry of the debtor's discharge on September 5, 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 request for prospective relief will be dismissed as moot.

As to the estate, the trustee filed a report of no distribution on June 29, 2017. Based on this and on the in rem relief findings, prospective relief from stay will be granted as to the estate under section 362(d)(1) for cause.

Prospective relief from stay will be granted as to the estate to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief will be 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 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 because the movant has not identified a valid basis for such an award. The instant debtor is admittedly not in contractual privity with the movant. The debtor is not a party to the agreements that contain the movant's attorney's fee provisions.

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

3. 17-24949-A-7 JANETTE VERGARA — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 8-24-17 [22]
WELLS FARGO BANK N.A. VS.

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

The movant, Wells Fargo Bank, seeks prospective, retroactive, and in rem relief

from the automatic stay as to a real property in La Puente, California under 11 U.S.C. § 362(d)(1) and 362(d)(4).

The court will grant retroactive relief from the automatic stay. The movant seeks retroactive relief with respect to an August 3, 2017 foreclosure sale of the property.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

The movant did not know of this bankruptcy case, filed on July 28, 2017, until after the August 3, 2017 foreclosure sale. Docket 24 at 4. The court is unaware of unreasonable or inequitable conduct by the movant. As this is the fifth bankruptcy case involving the subject property since March 2016, the court would have granted relief from stay if the movant knew of this case and had applied in time for such relief prior to the August 3 sale. Accordingly, retroactive relief from stay with respect to the August 3 sale is proper.

As the movant sold the property to a third party, prospective relief and in rem relief under section 362(d)(4) will be denied as moot and unnecessary. See Docket 25 at 3. The debtor no longer owns the property.

To the extent applicable, 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 court sees no evidence of value for the property in the record.

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

4. 17-22851-A-7 ABDUL/TAHMINA RAUF — MOTION TO AVOID JUDICIAL LIEN
EJS-1
VS. LAKEVIEW PETROLEUM — 9-7-17 [42]

Tentative Ruling: The motion will be granted.

A judgment was entered against debtor Abdul Rauf in favor of Stohlman & Rogers,

Inc., d.b.a. Lakeview Petroleum for the sum of $133,260.81 on September 7, 2010. The abstract of judgment was recorded with Sacramento County on October 13, 2010. That lien attached to the debtor's interest in a residential real property in Sacramento, California.

The judgment creditor has filed an opposition, arguing that: (1) the deed against the property in favor of the Internal Revenue Service is vague and should not be paid; (2) the deed against the property in favor of California Bank of Trust is vague and should not be paid; (3) the debtors have undervalued the property.

First, the court does not decide if debts should be paid based on whether they are vague or unclear. Just because a debt may be vague or unclear is not a basis for disallowing payment or ignoring the debt. Moreover, Fed. R. Bankr. P. 7001(4) requires an adversary proceeding for a determination of the validity, priority, or extent of a lien or other interest in property. In other words, in the event the judgement creditor is seeking to dispute the claim of California Bank of Trust and/or the Internal Revenue Service, it must do so via an adversary proceeding.

The secured claims of California Bank of Trust and the Internal Revenue Service have been scheduled, and the court has no evidence that they are objectionable for any reason. Further, the docket reflects that the debtor has filed evidence of both liens. See Docket 55, Exs. B & C.

Finally, the debtor's opinion of value in the schedules is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The judgement creditor has provided the court with no contrary evidence of value. The opposition contains only unsubstantiated allegations and a request to assess the property for the purposes of valuation on October 11, 2017 at 1:30.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $253,000 as of the petition date. Dockets 44, 45, 1. The unavoidable liens totaled $323,252 on that same date, consisting of a single mortgage in favor of California Bank of Trust in the amount $217,650 and a secured tax lien in the amount of $105,602. Dockets 44, 45, 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Dockets 44, 45, 1.

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

5. 10-41363-A-7 THOMAS BROOKS — MOTION TO AVOID JUDICIAL LIEN
JCO-2
VS. DISCOVER BANK
9-5-17 [29]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $18,555.63 on June 11, 2010. The abstract of judgment was recorded with Tehama County on July 21, 2010. That lien attached to the debtor's interest in a residential real property in Corning, California. The debtor seeks to avoid

the lien under section 522(f).

The motion will be denied. Although this case was filed on August 11, 2010, the debtor amended his Schedule A on July 28, 2017, seven years later, to increase the value of the property from $124,000 (per original Schedule A) to $131,099, coinciding with the unavoidable liens on the property ($131,098). Docket 20.

The supporting declaration states that "[t]he amended value is within ten percent of the original value estimated on the original petition at the time of its filing." Docket 31 at 2. The court does not know what this means.

The motion also says that the debtor "has merely restated the value of the property at that time within reasonable variation from the original estimate." Docket 29 at 2. In other words, the debtor does not deny his original valuation of the property. He only claims a right to *restate* the value of the property by 10%. However, there is no factual or legal basis for this assertion. The debtor does not claim a factual error in the original valuation of the property. Seven years have passed since the debtor's original valuation and he does not deny that valuation.

The debtor should note that exemptions for lien avoidance purposes are determined as of the petition date. Hence, only the valuation of the property as of the petition date is relevant.

Further, there is no 10% property valuation variation rule, when lien avoidance is concerned. Even if there were such a rule, why doesn't the debtor decrease the value of the property, rather than increasing it? As the debtor has not denied the original valuation of the property, why cannot that valuation be applied to the lien avoidance analysis? The court is unprepared to accept the debtor's $131,099 amended valuation of the property on this record.

Finally, even if the court were to ignore the foregoing, the court has no admissible evidence of the property's value. The supporting declaration merely states that "[t]he amended value of the property was stated at $131,099.00." Docket 31 at 2. This is only a reference to an out-of-court statement offered for the truth of the matter asserted therein, *i.e.*, the valuation in the Amended Schedule A. It is thus admissible hearsay. Fed. R. Evid. 801(c), 802.

6.	15-23164-A-7 DNL-10	JF MCCRAY PLASTERING, INC.	MOTION TO SELL AND TO APPROVE COMPENSATION FOR REAL ESTATE BROKER 9-5-17 [106]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" and free and clear of two liens for $332,000 a real property in Citrus Heights, California, to Richard Cohen Properties. Escrow fees will be split evenly among the seller and buyer.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and for approval of the payment of the real estate broker's commission.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens;

2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The property is unencumbered except for a special tax lien in the amount $4,928.95, which will be paid from escrow, and the two liens the trustee is seeking to sell the property free and clear of:

– a judicial lien based on a $639,996.74 judgment ($297,186.08 outstanding) held by the trustees of various Carpenter Trust Funds, recorded against the property on December 2, 2014 and based on an October 1, 2014 judgment entered against Diane McCray in her individual capacity, and

– an IRS lien for $327,638.71 filed against the property on July 20, 2016 and based on debt owed by Diane McCray in her individual capacity.

The trustee is asking that the sale be approved pursuant 11 U.S.C. § 363(f)(4) free and clear of the Carpenter Trust Funds' lien and the IRS lien.

This case was filed on April 17, 2015. The estate's interest in the real property arises from a court-approved settlement agreement between the estate and Shawn McCray, the debtor's principal. On June 20, 2017, the court approved the settlement, resolving the estate's interest in proceeds from a receivable belonging to the debtor (the T/D receivable), some of which proceeds ($266,977.28) were transferred to Mr. McCray and were used by him in part to pay off an obligation secured by his interest in real property in Citrus Heights, California. Dockets 90 & 91.

Mr. McCray received $266,977.28 on account of the receivable from the general contractor at a community college project. On the date the settlement was approved, the general contractor was holding another $36,567 on account of the receivable. Dockets 90 & 91.

Under the settlement: the transfer of the debtor's receivable proceeds was avoided; the estate recovered the real property (except for a shed and a freestanding bar on the property) and the final receivable proceeds held by the general contractor; the trustee received authority to sell the real property, with net sale proceeds to be distributed 60% to the estate and 40% to Mr. McCray. Dockets 90 & 91.

The court will overrule the opposition of the Carpenter Trust Funds, which argues that "[t]here is no basis under § 363(f)(4) to approve the sale . . . given that . . . the [bankruptcy] Trustee is recovering property subject to the Carpenters Trust Funds' lien, i.e.[,] proceeds of the T/D Receivable." The Carpenter Trust Funds claim to "hold an undisputed lien against the accounts receivable of [the debtor], including the T/D Receivable." Docket 116 at 4.

The Trust Funds' judgment was obtained on October 1, 2014 against "the Debtor JF McCray Plastering, Inc. . . .; Diane K. McCray, individually and Joel F. McCray, Jr., individually." Docket 116 at 1. Based on this judgment, the Trust Funds recorded a notice of judgment lien with the California Secretary of State on November 7, 2014, with respect to the debtor. Docket 116 at 2.

In addition, the Trust Funds recorded an abstract of the judgment in Sacramento County on December 2, 2014 with respect to Diane McCray individually. Docket 116 at 4.

However, the judgment lien did not attach to the debtor's receivable because the debtor transferred the receivable to Shawn McCray on October 23, 2014, two weeks prior to the recordation of the notice of judgment lien with the California Secretary of State. Docket 116 at 2. And, Shawn McCray was not subject to the judgment, notice of judgment, or recorded abstract of judgment.

Moreover, the Trust Funds do not explain how, even if they had a lien on the receivable before it was transferred from the debtor to Shawn McCray, they could have a lien on real property whose loan was paid down by proceeds from the receivable. Even if the Trust Funds have security interest in the proceeds from the receivable, those proceeds were transferred by the paying down the mortgage.

Cal. Civ. Proc. Code § 697.620(b) and (c), cited by the opposition, does not permit such a lien in the event of a bankruptcy proceeding. It provides that:

"(b) Except as provided in subdivision (c), the judgment lien on personal property continues in the proceeds with the same priority.

"(c) In the event of insolvency proceedings (as defined in Section 1201 of the Commercial Code) instituted by or against the judgment debtor, the judgment lien continues under subdivision (b) only in the following proceeds:

"(1) Proceeds in a separate deposit account containing only proceeds.

"(2) Proceeds in the form of money which are neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings.

"(3) Proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings."

The receivable proceeds were not in a separate deposit account and were not in the form of a check that was not deposited. They were commingled with other proceeds used to pay down the mortgage loan.

Further, as mentioned above, prior to February 9, 2015, Diane McCray held title to the subject real property only as trustee of the McCray Family Trust Created Under the Joel F. and Diane McCray Living Trust Dated August 9, 2000, which trust was not subject to the Trust Funds' judgment. On February 9, 2015, the family trust transferred the real property to Shawn McCray.

The lien of the Trust Funds is in bona fide dispute.

The debt underlying the IRS lien was not owed by the McCray family trust either. It was owed only by Diane McCray in her individual capacity. Docket 110 at 7-9, 12.

More, the July 20, 2016 IRS lien was recorded after Diane McCray transferred the family trust's interest in the property to Shawn McCray on February 9, 2015. Docket 110 at 10-11.

Given the foregoing, both liens are in bona fide dispute. As such, the property can be sold free and clear of those liens.

Although each of the liens exceeds the sale proceeds and the liens would attach to the sale proceeds, the sale is in the best interest of the creditors and the estate.

The trustee has identified fatal issues as to the validity of each lien. And, as there are no other encumbrances against the property, except for the $4,928.95 special tax lien, the estate will receive 60% (or approximately $180,000) of the net sales proceeds.

The sale then is highly likely to generate significant proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(4), given the bona fide dispute of the Trust Funds' and IRS' liens. The court will approve the sale free and clear of those liens.

The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

FINAL RULINGS BEGIN HERE

7. 13-27117-A-7 DAVID/VICTORIA EHRHARDT — MOTION TO AVOID JUDICIAL LIENS
MTM-6
VS. PORTFOLIO RECOVERY ASSOCIATES — 8-21-17 [95]

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 debtor Victoria Ehrhardt in favor of Portfolio Recovery Associates, L.L.C. for the sum of $11,196.49 on December 20, 2012. The abstract of judgment was recorded with Amador County on January 14, 2013 at 10:38 a.m. That lien attached to Victoria Ehrhardt's 2.93% interest in a 400-acre undeveloped parcel of land in Amador County, California.

A judgment was entered against debtor Victoria Ehrhardt in favor of Portfolio Recovery Associates, L.L.C. for the sum of $10,889.76 on December 20, 2012. The abstract of judgment was recorded with Amador County on January 14, 2013 at 10:42 a.m. That lien attached to Victoria Ehrhardt's 2.93% interest in a 400-acre undeveloped parcel of land in Amador County, California.

As the judgments were entered only against Victoria Ehrhardt, this ruling pertains solely to Victoria Ehrhardt's interest in the subject real property. The motion does not contend that the judgments entered against Victoria Ehrhardt became a lien on David Ehrhardt's 2.93% interest in the subject property.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $2,000 as of the date of the petition. Docket 97. The unavoidable liens totalled $0.00 on that same date. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $2,000. See Dockets 1 & 57.

The respondent holds two judicial liens created by the recordation of abstracts 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 liens. Therefore, the fixing of the judicial liens impairs the debtor's exemption of the real property and their fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8. 17-20122-A-7 CANDEE COOPER — MOTION TO COMPEL ABANDONMENT
HLG-1 — 8-25-17 [18]

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 seeks an order compelling the trustee to abandon the estate's interest in a real property, 2998 Muskrat Way Sacramento, California. 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 debtor has scheduled the value of the property at $351,000. The property is encumbered by a first deed of trust in favor of Guild Mortgage Co. in the amount of $190,838.13, a second mortgage in favor of CalFHA Mortgage Assistance Corp. in the amount of $9,187.21, and a third mortgage in favor of CalFHA Mortgage Assistance Corp. in the amount of $7,615.50, totaling $207,640.84. The debtor has exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

The trustee has filed a non-opposition to the motion.

Given the property's value, encumbrances, exemption claim, and likely liquidation costs of approximately $28,080 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

9. 16-23224-A-7 LORD ARIAS
DNL-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
9-12-17 [45]

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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,929.37 in fees and $1,070.63 in expenses, for a total of $5,000. This motion covers the period from June 6, 2016 through September 5, 2017. The court approved the movant's employment as the trustee's attorney on June 17, 2016. In performing its services, the movant charged

hourly rates of $50, $100, $200, $325, and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) reviewing petition documents,

(2) evaluating the estate's and the debtor's estranged spouse's interests in a real property in North Highlands, California,

(3) preparing and prosecuting an adversary proceeding for the sale of the entire property under 11 U.S.C. § 362(h),

(4) negotiating settlement with the debtor and his spouse over each respective party's interest in the property,

(5) preparing and prosecuting motion for approval of the settlement,

(6) advising the trustee about 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.

10. 17-22724-A-7 TREVIAS MINNER — MOTION FOR AN EXTENSION OF TIME TO PAY THE UNPAID FILING FEE AND ADMINISTRATIVE FEE
LDD-1 — 9-25-17 [21]

Final Ruling: Because no notice and a hearing is necessary to hear this motion,, it is removed from calendar for resolution without argument.

The motion will be granted.

The debtor requests an extension of time to pay the unpaid filing fee of $335.00 to October 25, 2017. The debtor filed this chapter 7 case on April 24, 2017. The court granted the debtor's application to pay the filing fee in installments with the last of four installments being due on August 23, 2017. Docket 6. The debtor received a Notice of Intent to Close Chapter 7 Case without Entry of Discharge scheduled for September 25, 2017, and he is requesting an extension of time for the payment of the fees.

At the time of filing, Debtor was employed and is currently employed with JCPenney, earning approximately $1,279.65 (net) per month. Debtor has been required to travel to Tracy, CA for training for the past couple of months by his employer and has had difficulty with the additional travel expenses. The debtor has one young child age 2 and has been unable to pay any of the installment payments to date due to paying for his usual living expenses in addition to the travel expenses for his employer. Debtor estimates that the training will be complete by the end of September 2017 and that he will be able to pay the remaining filing fee by October 25, 2017.

The court is willing to extend the filing fee deadline to October 25, 2017

whereby the entire $355.00 will be due. The motion is granted.

11. 17-24327-A-7 ROBERT/PEGGY COSSEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
WELLS FARGO BANK, N.A. VS. — 8-21-17 [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 in part and dismissed as moot in part.

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

Given the entry of the debtor's discharge on September 27, 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 $199,000 and it is encumbered by claims totaling approximately $250,372. 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 August 29, 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.

12. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — OBJECTION TO CLAIM
DRE-1
VS. HUI-MING CHANG — 8-21-17 [63]

Final Ruling: The objection was continued to October 12, 2017 per stipulation of the parties by order of the court. Docket 70.

13. 16-23549-A-7 VENTON/NOEMI HAMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FIN'L SVCS., INC., VS. — 8-23-17 [52]

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, Americredit Financial Services, seeks relief from the automatic stay with respect to a 2016 Chevrolet Silverado.

Given the entry of the debtor's discharge on September 27, 2016, 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 trustee has filed non-opposition to this motion. The court also notes that the trustee filed his final report on September 11, 2017. This is cause for the granting of relief from stay as to the estate.

The court concludes that there is no evidence of necessity to a reorganization or that the trustee can administer the vehicle for the benefit of the creditors.

Accordingly, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) 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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. Docket 56 at 3, ¶3c; Docket 54. 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 ordered waived per the movant's amended motion for relief from stay retracting the movant's original request for such waiver. Docket 65.

14. 17-24949-A-7 JANETTE VERGARA
AP-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-29-17 [30]

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, Wells Fargo Bank, seeks prospective and in rem relief from the automatic stay as to a real property in Riverside, 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 November 2005, Henry Redmond borrowed money to purchase the subject property and also pledged the property as collateral for the loan. The movant eventually acquired interest in the loan.

On December 28, 2016, Mr. Redmond executed a grant deed transferring a tenancy in common ownership interest in the property for no consideration to himself and Rita Hernandez. Rita Hernandez filed a chapter 7 bankruptcy case on December 29, 2016, which case was dismissed on January 27, 2017.

On May 2, 2017, Mr. Redmond executed a grant deed transferring a tenancy in common ownership interest in the property for no consideration to himself and Daniela Carranza. Daniela Carranza filed a chapter 7 bankruptcy case on May 2, 2017, which case was dismissed on June 5, 2017.

On July 24, 2017, Mr. Redmond executed a grant deed transferring a tenancy in common ownership interest in the property for no consideration to himself and the subject debtor. The subject debtor has not appeared at the meeting of creditors and there is a pending dismissal motion by the trustee. Dockets 37 & 38.

Docket 35, Exs. 6-8.

The above history of case filings, case dismissals, and transfers of the property 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. This case was filed in a similar timing pattern relative to the transfer of the property, as the prior bankruptcy cases involving the property were filed. The scheme involves both multiple bankruptcy filings and unauthorized transfers of the property.

Given the timings of the transfers relative to the transferees' bankruptcy filings, and then subsequent dismissals of those bankruptcies, the transfers were made and bankruptcies 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.

Because the movant has not established that the value of its collateral exceeds

the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b). The movant contends that the value of the property is $1.15 million, whereas its claim against the property is in excess of $1.838 million.

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

15. 15-21850-A-7 A.L.L. GROUPS, INC. MOTION TO
GMR-2 APPROVE COMPENSATION OF ACCOUNTANT
8-28-17 [68]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $1,536.34 in fees and $263.66 in expenses, for a total of $1,800. This motion covers the period from April 14, 2015 through August 28, 2017. The court approved the movant's employment as the estate's accountant on April 21, 2015. In performing its services, the movant charged hourly rates of $345 and $375.

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

16. 17-25357-A-7 ANISHA SINGH MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA, INC., VS. 9-1-17 [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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2015 Dodge Durango. The movant has produced evidence that the vehicle has a value of $24,350 and its secured claim is approximately $25,461. Docket 14.

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.

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.

17. 17-25664-A-7 JOSE VARGAS GONZALEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 9-7-17 [27]
AMERICAN HONDA FIN. 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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to an already recovered 2015 Honda Accord. The movant has produced evidence that the vehicle has a value of $16,275 and its secured claim is approximately $32,782. Docket 32.

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.

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

Because the movant has not established that the value of its collateral exceeds

the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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