

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 4, 2017 at 10:00 a.m.

1. 17-26901-A-7 PAULA ROGERS MOTION FOR
JHW-1 RELIEF FROM AUTOMATIC STAY
AMERICREDIT FINANCIAL SERVICES, INC. VS. 11-3-17 [11]

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

The motion will be granted.

The movant, Americredit Financial Services, seeks relief from the automatic stay with respect to an already repossessed 2006 Infinity H35. The movant has produced evidence that the vehicle has a value of \$5,267 and its secured claim is approximately \$10,107. Docket 13.

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, the movant obtained possession of the vehicle pre-petition.

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.

Tentative Ruling: The objection of Marquitta Allen will be sustained. The objection of Cathy Brennan will be overruled.

The trustee filed his final account and distribution report on October 11, 2017. Docket 1239. Two objections have been filed to the report, one by Marquitta Allen, filed on November 13, and another by Cathy Brennan, filed on November 17. Dockets 1244 & 1245.

First, there is a notice of hearing (albeit not separate) accompanying the objection of Ms. Allen. Docket 1244 at 2. But, there is no notice of hearing accompanying the objection of Ms. Brennan. See Docket 1245.

The notice of the trustee's report specifically mandates the filing of a notice of hearing with any objection to the report.

"[A]ny person wishing to object to the trustee's Final Account and Distribution Report, Certification That the Estate Has Been Fully Administered, and Application to be Discharged must file a written objection within 30 days of the date of this Notice. The objection shall state with particularity the grounds therefor (see NOTE below) and shall be accompanied by a notice of hearing with the date and time filled in. Self set calendar procedures and available hearing date are posted under Court Calendars on the Court's web site (www.caeb.uscourts.gov)."

Docket 1240.

Second, both objections are untimely. Ms. Allen's objection was filed on November 13, 33 days after the date October 11 date of the notice of the trustee report. Ms. Brennan's objection was filed on November 17, 37 days after the date October 11 date of the notice of the trustee report.

Despite the foregoing deficiencies, the court will address the merits of the objections.

The court has reviewed the trustee's report, and proof of claim 13 filed by Ms. Allen and demanding \$3,906 in wages. The report says that no portion of the claim has been paid, even though the claim is marked as a priority wage claim, was not objected to by the trustee, and similar other claims were paid. See 11 U.S.C. § 507(a)(4); see also Claims' Register 13-1 & Docket 1239 at 9 & 56. The court has been unable to find an objection to Ms. Allen's proof of claim on the docket.

The court cannot explain from the record before it why the trustee did not pay Ms. Allen's claim. Some wage claims filed by employees were not paid because the trustee paid the wages due the employees by paying claims filed on the employees' behalf by their union. The record before the court does not indicate that Ms. Allen's claim was paid through a claim filed by a union.

Finally, Ms. Brennan's objection will be overruled. She complains that the debtor did not apply \$10,912.96 it withheld from her paycheck toward social security benefits.

Ms. Brennan's objection is unsupported by any evidence, including probative and admissible evidence that what she asserts is true.

And, even if what she asserts is true, she does not say that she filed a proof of claim in this case based on the debtor's failure to remit the \$10,912.96 to the Social Security Administration. Nor has the court been able to find anywhere on the claims' register a proof of claim filed by Ms. Brennan. As such, her objection to the report will be overruled.

3. 17-25618-A-7 CHRISTOPHER/JANA BURNS MOTION FOR
EMM-1 RELIEF FROM AUTOMATIC STAY
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS. 10-23-17 [22]

Tentative Ruling: The motion will be granted.

The movant, Wilmington Savings Fund Society, seeks relief from the automatic stay as to real property in Roseville, California.

The debtors oppose the motion, contending that they have received an offer for a potential loan modification from the movant's servicer (Selene Finance). They seek to avail themselves of the potential loan modification.

The property has a value of \$256,000 and it is encumbered by claims totaling approximately \$360,103. The movant's deed is alleged to be in first priority position, securing a claim of approximately \$123,203.

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 trustee filed a report of no distribution on October 6, 2017.

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

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

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.

The debtors' opposition will be overruled. The granting of this motion is not inconsistent with the debtors negotiating a loan modification with the movant. Nothing in this ruling bars the debtors from negotiating or entering into a loan modification.

On the other hand, the debtor's desire to modify the subject loan is not a defense to the stay relief request. Under section 362(d)(2), ample grounds exist for the granting of such relief. There is no equity in the property and the debtors have not disputed the property's value. The movant's valuation comes from the debtors' own schedules. And, when grounds for the granting of stay relief exist, section 362(d) mandates that the court award such relief. "[T]he court *shall grant* relief from the stay." 11 U.S.C. § 362(d).

4. 15-27322-A-7 WILLIAM MYER MOTION TO
DNL-11 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
10-24-17 [147]

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 \$26,205 in fees and \$241.51 in expenses, for a total of \$26,446.51. This motion covers the period from June 27, 2016 through October 20, 2017. The court approved the movant's employment as the trustee's attorney on July 13, 2016. In performing its services, the movant charged hourly rates of \$100, \$200, \$225, \$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 bankruptcy documents, (2) assisting the trustee with identification of estate assets, (3) preparing discovery requests, (4) analyzing encumbrances on real property, (5) preparing and filing motion to sell real property, which was subsequently dismissed after the buyer backed out, (6) preparing another motion to sell which was never filed because that buyer backed out as well (the movant did not charge for this work), (7) negotiating agreement with the debtors over their purchase of the real property and two vehicles (GMC and Lexus), and their turnover of some snowmobiles and a Mercedes vehicle, (8) preparing and prosecuting motion for approval of the agreement, (9) preparing and prosecuting motion to sell the Mercedes and snowmobiles, (10) assisting the trustee with the general administration of the estate, and (11) 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.

5. 10-49842-A-7 DANIEL/SUSAN KAESTNER MOTION TO
SCB-5 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
11-2-17 [60]

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

The motion will be granted.

Schneweis-Coe & Bakken, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$5,940 in fees and \$381.30 in expenses, for a total of \$6,321.30. This motion covers the period from March 14, 2016 through August 29, 2017. The court approved the movant's employment as the trustee's attorney on March 23, 2016. In performing its services, the movant charged an hourly rate of \$300.

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

included, without limitation: (1) evaluating medical device claims held by the debtors and the estate, (2) interviewing the debtors' personal injury counsel to be employed by the estate, (3) preparing and filing employment motion for the employment of the debtor's counsel by the estate, to continue prosecuting the medical device claims, (4) managing special counsel's representation of the estate, (5) preparing and prosecuting a motion to approve compromise of the medical device claims, and (6) preparing and prosecuting a motion for approval of special counsel's compensation.

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

The court reminds the movant to clearly and unambiguously state in the heading of the motion whether this is an interim (and which interim) or final request for compensation (e.g., first interim, second interim, first and final, second and final, etc.).

The court also reminds the movant to itemize her request for compensation in the motion. The motion merely asks for \$6,321.30 in compensation, without stating how much of that amount is for fees and how much of it is for expenses. The court should not have to look for such details in the exhibits to the motion.

The court further reminds the movant to clearly and unambiguously state in the motion the period of services covered by the requested compensation. The court should not have to look for such details in the exhibits to the motion.

The court reminds the movant to state in the motion the hourly rates that have been charged for the requested compensation. The court should not have to look for such details in the exhibits to the motion.

6. 17-22851-A-7 ABDUL/TAHMINA RAUF MOTION TO
EJS-1 AVOID JUDICIAL LIEN
VS. LAKEVIEW PETROLEUM 9-7-17 [42]

Tentative Ruling: The motion will be denied without prejudice.

The court continued the hearing on this motion from October 12, 2017, after it sustained the creditor's objection to the debtors' evidence on the value of the property, contained in their supporting declaration. Docket 58 at 2:00-10 (audio file). The court allowed the debtors to supplement the evidence of value for the property no later than October 30, which the debtors have not done. As such, the court does not have evidence of value for the subject property. Without such evidence, the court cannot determine whether the subject lien impairs the debtors' exemption in the property. Accordingly, the motion will be denied.

7. 17-26780-A-7 GUILLERMO MADRIGAL AND MOTION TO
WRF-1 GUADALUPE VALENCIA AVOID JUDICIAL LIEN
VS. BANK OF AMERICA, N.A. 11-14-17 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers

opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against the debtor Guadalupe Valencia in favor of Bank of America for the sum of \$9,028.78 on December 16, 2015. The abstract of judgment was recorded with Sacramento County on May 16, 2016. 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 \$170,000 as of the petition date. Dockets 1, 11, 12. The unavoidable liens totaled \$151,342 on that same date, consisting of a mortgage for \$140,199 in favor of Specialized Loan Servicing and a mortgage for \$11,143 in favor of Bank of America. Dockets 1, 11, 12. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$18,658 in Schedule C. Dockets 1, 11, 12.

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).

8. 17-24884-A-7 SAINI TRUCKING INC. MOTION FOR
SS-1 RELIEF FROM AUTOMATIC STAY
CHRISTOPHER CHAVEZ VS. 11-13-17 [31]

Final Ruling: The motion will be dismissed without prejudice.

The movant has provided 26 days' notice of the hearing on this motion. When less than 28 days of notice are given, the respondent is not required to file written opposition. The respondent may raise opposition orally at the hearing. Nevertheless, the notice of hearing for the motion states that opposition to the motion should be prepared and filed with the court. Notice is defective.

9. 17-21995-A-7 JASVINDER CHAHAL MOTION FOR
RWR-1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST VS. 5-22-17 [38]

Tentative Ruling: The motion will be denied.

The movant, Bank of the West, seeks relief from the automatic stay as to real property in Stockton, California.

The court continued the hearing on this motion from June 19 in order for the trustee to supplement the record with respect to the over \$500,000 in tax liens against the property.

The property has a value of \$200,000 and the movant's sole mortgage claim against the property totals only approximately \$44,413. While the movant

claims that the property is encumbered by claims totaling approximately \$575,413, including approximately \$531,000 of tax liens, the trustee has submitted evidence that those tax liens are being satisfied from the sale of other assets of the estate. Docket 135.

Moreover, the taxes underlying the liens are being reassessed as the debtor has been filing outstanding tax returns with large tax losses (e.g., \$175,000 in 2010 return, \$183,000 in 2011 return), which will substantially reduce or completely eliminate any taxes upon which the liens are based. Docket 135. Given this, the trustee will be seeking to sell the subject property for the benefit of unsecured creditors.

The movant has not met its burden of persuasion on establishing lack of equity in the property. The movant's claim secured by the property totals only \$44,413, leaving approximately \$155,587 of equity in the property. Given the equity in the property, relief from stay 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 1200, 1202 (11th Cir. 1995)).

The movant also has an equity cushion of approximately \$155,587, based on the record. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains his discharge and the trustee administers 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. The parties shall bear their own fees and costs.

10. 17-24195-A-7 GOHAR ASLANYAN MOTION TO
SS-1 COMPEL ABANDONMENT
11-6-17 [56]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the 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 the debtor's real property, located at 4535 Hackberry Lane, in Carmichael, California. The entire equity in the property is exempt and the debtors wish to refinance it.

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 \$465,000. The property is encumbered by a first deed of trust in favor of Seterus, Inc. in the amount of \$360,124 and a judgment lien in favor of Transport Funding, LLC in the amount of \$39,963.48, for a total of \$400,087. The debtor has 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 \$37,200 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

11. 17-24195-A-7 GOHAR ASLANYAN MOTION TO
SS-2 AVOID JUDICIAL LIEN
VS. TRANSPORT FUNDING 11-20-17 [65]

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

The motion will be granted in part.

An order for issuance of writ of attachment was entered against the debtor in favor of Transport Funding, L.L.C., for the sum of \$39,963.48 on December 22, 2016. The notice of attachment was recorded with Sacramento County on February 6, 2017. That notice attached to the debtor's interest in a residential real property in Carmichael, California.

The motion will be granted in part pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$465,000 as of the petition date. Dockets 61. The unavoidable liens totaled \$360,124 on that same date, consisting of a single mortgage in favor of Seterus. Docket 61. The debtor is entitled to an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000 in Schedule C. Docket 61.

The respondent holds a writ of attachment in the chain of title of the subject real property.

The sum of the unavoidable liens and the exemption is \$460,124, leaving \$4,876 in equity available to satisfy the subject writ of attachment and pending judgment lien.

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 except for \$4,876. Therefore, the fixing of this pending judicial lien impairs the debtor's exemption of the real property to the extent of \$35,087.48 (\$39,963.48 minus \$4,876 of available equity). Its fixing to that extent will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

12. 17-24195-A-7 GOHAR ASLANYAN MOTION FOR
JWC-1 RELIEF FROM AUTOMATIC STAY
TRANSPORT FUNDING, L.L.C. VS. 7-31-17 [14]

Tentative Ruling: The motion will be granted in part.

The movant, Transport Funding, L.L.C., seeks relief from the automatic stay to complete the prosecution of a state court collection action against the debtor.

The movant's predecessor in interest financed a purchase of a truck by the debtor's now deceased husband. After the debtor's husband passed away, the movant initiated the collection action against the debtor, and obtained in December 2016 a pre-judgment attachment lien against the debtor's real property in Carmichael, California by recording a notice of attachment with the Sacramento County Recorder's Office. On May 12, 2017, the state court granted a motion for summary judgment in favor of the movant. Before judgment could be entered, the debtor filed this case on June 26, 2017.

By this motion, the movant is seeking relief from stay in order to obtain the entry of judgment in the collection action. The movant also asks for a delay of entry of the bankruptcy discharge until the collection judgment is entered.

"Under California law, certain creditors may obtain a prejudgment writ of attachment against property of the debtor by establishing the probable validity of their claims. See Cal. Civ. Proc. Code §§ 484.090, 485.220, 486.020. An attachment lien is created when the creditor files a notice of attachment or otherwise levies on the property. See Cal. Civ. Proc. Code § 488.500(a). This lien has priority over subsequent liens. See Cal. Civ. Proc. Code § 488.500(b). Unlike the holder of a security interest, however, the attachment creditor has no right to proceed against the property until after the creditor obtains a judgment. See Arcturus Mfg. Corp. v. Superior Court, 223 Cal. App. 2d 187, 35 Cal. Rptr. 502, 505 (1964). 'The attaching creditor obtains only a potential right or a contingent lien,' Puissegur v. Yarbrough, 29 Cal.2d 409, 175 P.2d 830, 831 (1946), which is perfected or converted to a judgment lien upon judgment for the creditor, Arcturus, 35 Cal.Rptr. at 505; cf. Cal. Prob. Code § 9304 (describing the procedure for converting an attachment lien into a judgment lien in the context of a probate action). The priority of the judgment lien relates back to the date of the attachment lien. Thus, an attachment lien acts as a placemaker, ensuring the creditor's spot in the priority line until the creditor can obtain judgment."

Diamant v. Kasparian (In re S. California Plastics, Inc.), 165 F.3d 1243, 1246 (9th Cir. 1999).

Section 362(d)(1) of the Bankruptcy Code provides in relevant part: "[o]n request of a third 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 - (1) for cause[.]" 11 U.S.C. § 362(d)(1). Courts have granted relief from the stay for cause when necessary to permit pending litigation to be concluded in

another forum. See, e.g., In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990); In re Kemble, 776 F.2d 802, 807 (9th Cir. 1985).

The court finds that cause exists to grant relief from stay. The movant has a pre-petition prejudgment attachment lien against the debtor's real property. Also, summary judgment was granted in the movant's favor pre-petition. The movant is only a step away from removing the contingency on its prejudgment lien. The only remaining task for the state court are ministerial, the entry of a judgment and the issuance of an abstract of judgment.

Relief from stay will permit the complete the determination and liquidation of the movant's claim. The state court need only enter the judgement and issue an abstract of judgement to be recorded to perfect the movant's attachment lien.

Perfecting its judgment lien will not prejudice the interests of other creditors. The movant holds a pre-petition contingent lien which it now seeks to perfect. No priorities will be altered among creditors because the attachment lien was recorded outside of the preference period.

If the judgment is obtained and a judgment lien is recorded, the movant will have a judicial lien on the debtor's real property. To the extent that the debtor subsequently seeks to avoid the movant's judicial lien, in part or in whole, this court will then determine whether avoidance is appropriate under 11 U.S.C. § 522(f). It will not resolve the avoidability of the lien in connection with this motion.

For the forgoing reasons, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute claims against the debtor and enforce any judgment against the debtor's real property.

The court perceives no reason to delay the entry of a discharge.

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

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

13. 15-27399-A-7 DALJIT/HARMANDEEP SIDHU MOTION TO
DNL-8 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
11-6-17 [99]

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 \$27,887.50 in fees and \$894.99 in expenses, for a total of \$28,782.49. This motion covers the period from October 19, 2015 through November 6, 2017. The court approved the movant's employment as the trustee's attorney on October 21, 2015. In performing its services, the movant charged hourly rates of \$50, \$100, \$200, \$275, \$325, and \$400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with preserving the estate's interest in a freight truck and real property; (2) obtaining avoidance of liens and prosecuting preference litigation, (3) administrating real property (including preparation of sale agreement, opposing debtors' conversion motion, resolving claims of exemption via settlement, and preparing a motion for turnover), and (4) preparing and filing employment and compensation motions.

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

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.