UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 26, 2015 at 10:00 a.m.

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

1, 5,

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 23, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 9, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 17, 2015. 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. 13-31219-A-7 DUSTIN SIEPERT
JRR-4

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
12-1-14 [60]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from January 12, 2015 in order for the movant to address the court's concerns about the motion. The movant filed supplemental pleadings on January 15, 2015. An amended ruling from January 12 follows below.

The chapter 7 trustee, John Roberts, has filed his first and final motion for approval of compensation. The requested compensation consists of $19,325 in fees and $633.38 in expenses, for a total of $19,958.38. The services for the sought compensation were provided from August 29, 2013 through November 25, 2014. The sought compensation represents 55.5 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant made $394,572.74 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $22,978.64 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $17,228.64 (5% of the next $950,000 (or $344,572.74)). Hence, the requested trustee fees of $19,325 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." The movant's services included, without limitation: (1) analyzing the debtor's assets, (2) negotiating the sale of the estate's partial interest in a real property with the co-owner of the property, (3) preparing and prosecuting a motion to sell, (4) appearing at the hearing on the motion, (5) retaining a real estate broker to market and sell the property, after the court denied the sale motion, (6) negotiating with the co-owner about the consensual sale of her partial interest in the property, (7) preparing and prosecuting another motion to sell the property, and (8) preparing employment and compensation motions.

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

2. 14-31822-A-7 JOHN DYNOWSKI

MOTION TO SET ASIDE DISMISSAL O.S.T.
12-24-14 [12]

Tentative Ruling: The motion will be dismissed without prejudice.

The court granted the debtor's motion for order shortening the time for service and filing of the instant motion on January 16, 2015. Docket 14. In its order, the court required the debtor to give notice of the instant motion to "the trustee, all creditors, and the UST no later than 1/16/15." Docket 14 at 2.

However, the debtor has not filed any evidence of giving the notice required by the court for this motion. No proof of service has been filed by the debtor evidencing the required notice. The proof of service that is attached to the subject motion, filed on December 24, 2014, also does not provide evidence of service on the trustee, all creditors, and the United States Trustee. Docket 12. Accordingly, the motion will be dismissed.

3. 15-20228-A-7 ANGELINA MIRELES — MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY O.S.T.
GMW-2 — 1-15-15 [17]

Tentative Ruling: The motion will be dismissed without prejudice.

The court granted the movant's motion for order shortening the time for service and filing of the instant motion on January 16, 2015. Docket 21. In its order, the court permitted the motion to be set for hearing on January 26, 2015 at 10:00 a.m., provided the movant gives notice of that hearing to the debtor, the trustee, and the United States Trustee "no later than 1/16/15." Docket 21 at 2.

However, the proof of service filed by the movant indicates that the notice of the January 26 hearing was not served until January 17, 2015. Docket 26. The movant has not complied with the court's order requiring notice of the January 26 hearing to be given no later than January 16, 2015. The court then cannot hear this motion. It will be dismissed without prejudice.

4. 14-31337-A-7 PRESENTACION HAW — MOTION TO CONVERT CASE
AF-2 — 12-30-14 [22]

Tentative Ruling: The motion will be denied.

The debtor requests conversion from chapter 7 to chapter 13.

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

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

The motion will be denied because it neither states, nor contains evidence establishing whether, the debtor is eligible for relief as prescribed by Marrama. Merely stating that the debtor is eligible for chapter 13 relief is a legal conclusion that is unsupported by factual assertions. For example, the motion is silent as to the debtor's secured and unsecured debts.

Critically, the motion is silent as to the debtor's regular income that will

enable her to fund a chapter 13 plan. The debtor bears the burden of establishing regular and stable income. In re Ellis, 388 B.R. 456, 460 (Bankr. D. Mass. 2008) (failing by debtor to establish regular and stable income due to monthly budget deficit).

Finally, the prior filings by the debtor and her spouse convince the court that the subject motion is an attempt by the debtors to have the case converted for an improper purpose or in bad faith, namely, evading the trustee's efforts to administer the estate for the benefit of creditors.

Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present."

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

A finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

The instant case was filed after a total of four prior cases filed by the debtor and/or her spouse, since September 10, 2008. Three of those four cases were filed only since September 21, 2011.

The debtor and her spouse, James Haw, filed a chapter 7 case on September 10, 2008. Case No. 08-32809. The case was closed without the entry of discharge on January 16, 2009.

The debtor filed a chapter 13 case on September 21, 2011. Case No. 11-42737. The case was dismissed on November 29, 2011 due to the debtor's failure to file a chapter 13 plan and a motion to confirm that plan. Case No. 11-42737, Docket 33.

The debtor's spouse James Haw filed a chapter 7 case on August 26, 2013. Case No. 13-31208. A discharge was entered in the case on December 17, 2013.

The debtor filed a chapter 13 case on September 2, 2014. Case No. 14-28910. The case was dismissed on September 22, 2014 due to the debtor's failure to file the means test form. Case No. 14-28910, Dockets 3, 10, 11, 16.

The debtor filed the instant chapter 7 case on November 18, 2014. The initial meeting of creditors was held on December 18, 2014. Thereafter, the trustee issued a notice of assets.

In other words, the debtor's two most recent chapter 13 cases have resulted in dismissal due to the debtor's failure to comply with the obligations of a chapter 13 debtor.

Based on this, the court is persuaded that the debtor is seeking conversion for an improper purpose. As the debtor was unwilling to perform her obligations in

the prior cases, the court has no reason to believe that she will be willing to perform such obligations if this case is converted to chapter 13.

Another factor that convinces the court of the debtor's bad faith in seeking conversion is that she did not disclose any of the prior filings in the instant bankruptcy petition. Page two of the voluntary petition does not list any prior filings by the debtor or her spouse. Docket 1.

The court also notes that the debtor decided to seek conversion to chapter 13 only after the trustee determined there to be assets that could be administered for the benefit of creditors. The trustee filed a notice of assets on December 18, 2014 and this motion was filed on December 30, 2014. This, along with the debtor's history of filings, dismissals and failures to perform her debtor obligations, make this conversion request amount to bad faith. The motion will be denied.

5. 13-25140-A-7 ROBERT/CHERI DOWNEY — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
DNL-8 — 1-5-15 [83]

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

The motion will be granted.

Law Offices of Moseley Collins and Thomas Minder & Associates, special counsel for the estate, has filed its renewed first and final motion for approval of compensation.

The requested compensation consists of $211,453.23 in fees and $17,978.47 in expenses, for a total of $229,431.70. The compensation relates solely to services provided in a medical malpractice action brought by the debtors on August 1, 2012, before this case was filed on April 15, 2013. The movant has spent 734.1 hours of work on the case. The movant's services cover the period between July 2012 and the present.

The court approved the movant's employment as special counsel for the trustee on March 12, 2014. Docket 50. The requested compensation is based on a regressive contingency fee basis, providing for 40% of the first $50,000 in net recovery, 33.3% of the second $50,000, 25% of the next $500,000 and 15% of any additional net recovery in excess of $600,000. Docket 49.

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 consisted, without limitation, of investigating the debtors' malpractice

claims, preparing, filing and prosecuting the complaint, conducting discovery, negotiating settlement, communicating with the estate's trustee and general counsel, and preparing the settlement agreement.

The recovery obtained by the movant is expected to make this a surplus estate. The court also notes that the debtors agree to the sought compensation by the movant.

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.

6. 14-31285-A-7 CAROLINE BIRK — MOTION TO RECONSIDER 1-14-15 [28]

Tentative Ruling: The motion will be denied as unnecessary.

The debtor is asking the court to reconsider its order on Blue Mountain Homes' stay relief motion, heard on January 12, 2015 at 10:00 a.m., because the debtor was unable to attend the hearing on the motion.

However, the stay relief motion was not granted. The court dismissed as moot in part and denied in part Blue Mountain Homes' stay relief motion. Docket 25. Hence, there is nothing this court can reconsider that would help the debtor. In other words, there is no injury in fact that can be redressed by the court. As such, the debtor has no standing as to the relief she is requesting. This motion will be denied as unnecessary.

7. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN 11-26-14 [15]
LBG-1
VS. FORD MOTOR CREDIT CO. LLC DBA LAND ROVER CAPITAL GROUP

Tentative Ruling: The motion will be denied.

The court continued the hearing on this motion from December 29, 2014 in order for the debtor to address the following portion of the court's December 29 ruling:

"*The debtor is seeking the avoidance of a judicial lien held by Ford Motor Credit Company on two real properties, both in Roseville, California, owned by the debtor (2054 Blackheath Ln. & 3005 Acton Way).*

"*The motion will be denied. The judgment pursuant to which the lien was created on the two properties, was not entered against the debtor. The abstract of judgment attached to the motion states that the judgment giving rise to the lien was entered against Jesse Wheeler, the debtor's former spouse. Docket 18 at 7.*

"*A judgment was entered against Jesse Wheeler in favor of Ford Motor Credit Company for the sum of $68,531.17 on April 22, 2010. The abstract of judgment was recorded with Placer County on December 1, 2010. That lien allegedly attached to two residential real properties in Roseville, California (2054 Blackheath Ln. & 3005 Acton Way).*

"*This bankruptcy case, on the other hand, was filed solely by Nicole Wheeler.*

"*While California law provides that community debt may be satisfied from community property, the court has no evidence from the debtor that the debt giving rise to the judgment against Jesse Wheeler was community debt and has no evidence that the debtor held her interest in the two properties as community property when the liens against the properties were created, upon recordation of the abstract of judgment on December 1, 2010.*

"*Even though the debtor states in her supporting declaration that Jesse Wheeler is her "ex-husband," nothing in the record identifies the date when the couple divorced, the basis for the debt giving rise to the judgment, and who owned what interest in each of the two properties as of the lien creation date. Docket 17 at 1.*

"*Hence, the debtor has not carried her burden of persuasion that the judicial liens attached to her interest in the two properties, when the liens were created. Accordingly, the motion will be denied.*"

First, although the debtor filed supplemental pleadings on January 13, 2015, making additional factual allegations, those pleadings are inadmissible. The "supplemental pleading" (Docket 35) makes many factual assertions about the debtor's relationship with her former spouse, but none of those assertions are supported by a declaration. In other words, these factual assertions are inadmissible hearsay. Fed. R. Evid. 802. Similarly, the exhibits in support of the "supplemental pleading" (Docket 36), containing a notice of entry of judgment on dissolution of marriage and an interspousal transfer grant deed, are not authenticated by a declaration. Fed. R. Evid. 901(a), (b)(1).

Second, even if the above evidentiary deficiencies were absent, the additional information still does not answer the court's questions about the debt giving rise to the judgment and eventual judicial lien. The additional information from the debtor pertains only to the 2054 Blackheath Lane property and says nothing about the 3005 Acton Way property. The court has no information about who was on THE title of 3005 Acton Way when the abstract of judgment was recorded in Placer County, and has no information about when the debtor received complete title of that property.

Third, while the debtor contends that she and her former spouse were still both on title of the 2054 Blackheath Lane property when the judicial lien was created against that property, this still does not clarify the nature of the debt giving rise to the judgment - was it a community debt or separate debt?

Fourth, although it appears that the debtor and her spouse entered into a marital settlement agreement, there is nothing in the record indicating how the agreement treated the subject judicial lien.

Finally, the 2011 legal separation between the debtor and her former spouse, the September 2012 entry of the marital dissolution judgment, the January 26, 2014 transfer by the former spouse of his interest in the property to the debtor, and the August 29, 2014 instant bankruptcy filing, all took place after the creditor recorded its abstract of judgment against the property on December 1, 2010.

The motion still falls short of establishing that it complies with the basic lien avoidance rule that, unless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, the debtor cannot avoid the fixing of the lien under 11 U.S.C. § 522(f)(1). Weeks v. Pederson (In re Pederson), 230 B.R. 158, 161 (B.A.P. 9th Cir. 1999). "We

hold that [section] 522(f)(1) of the Bankruptcy Code requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest." Law Offices of Moore & Moore v. Stoneking (In re Stoneking), 225 B.R. 690, 693 (B.A.P. 9th Cir. 1998) (citing to Farrey v. Sanderfoot, 500 U.S. 291, 299 (1991) (prohibiting the avoidance of liens created on newly-acquired interest in property)).

8. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN
LBG-2 — 11-26-14 [20]
VS. JAN AND BLAIR HOMES

Tentative Ruling: The motion will be denied in accordance with the ruling on the related lien avoidance motion (DCN LBG-1). The supplemental pleadings filed in connection with this motion are identical to the supplemental pleadings filed in connection with the related lien avoidance motion (DCN LBG-1).

9. 14-28793-A-7 NICOLE WHEELER — MOTION TO AVOID JUDICIAL LIEN
LBG-3 — 11-26-14 [25]
VS. MICHAEL J. HALL

Tentative Ruling: The motion will be denied in accordance with the ruling on the related lien avoidance motion (DCN LBG-1). The supplemental pleadings filed in connection with this motion are identical to the supplemental pleadings filed in connection with the related lien avoidance motion (DCN LBG-1).

FINAL RULINGS BEGIN HERE

10.	14-30807-A-7 JHW-1 TD AUTO FINANCE, L.L.C. VS.	JOSE GONZALEZ AND VIRNA MAGANA	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-23-14 [18]

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

The motion will be granted.

The movant, TD Auto Finance, seeks relief from the automatic stay with respect to a 2009 Toyota Camry. The vehicle has a value of $6,154 and its secured claim is approximately $14,681.

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 December 3, 2014. 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.

11.	13-27715-A-7	CALIFORMACY INC.	MOTION TO EMPLOY 12-15-14 [113]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written

opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

12. 13-27715-A-7 CALIFORMACY INC. MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
12-15-14 [118]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

13. 14-32118-A-7 MARIETTA REYES
AJJ-1
VS. KELKRIS ASSOCIATES, INC.
MOTION TO AVOID JUDICIAL LIEN
12-18-14 [7]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Kelkris Associates, Inc. See Docket 11. And, while the debtor served Kelkris' attorney, Terry Duree, unless the attorney agreed to accept service of process, and there is no evidence he did, this service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

14. 14-24430-A-7 JOE CAMARA GARCIA
DPW-1
MOTION TO APPROVE COMPENSATION OF AUCTIONEER
12-19-14 [37]

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.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,364.40 in fees and $1,265 in expenses, for a total of $2,629.40. This motion is for a sale completed on November 18-20, 2014. The court approved the movant's employment as the trustee's auctioneer on October 22, 2014. The requested compensation is based on a 12% commission and reimbursement of transportation, storage and DMV registration searches and document preparation expenses.

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 sale of several vehicles and a trailer.

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

15. 14-30632-A-7 MEGAN DAVIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1
JPMORGAN CHASE BANK, N.A. VS. — 12-18-14 [13]

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, JPMorgan Chase Bank, seeks relief from the automatic stay with respect to a 2014 Mercedes-Benz GLK. The movant has produced some evidence that the vehicle has a value of $32,378 ($46,000 per Schedule B) and its secured claim is approximately $57,870.

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 December 24, 2014. 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.

16. 14-30732-A-7 DOLORES FRANCO — ORDER TO SHOW CAUSE 12-30-14 [14]

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

This order to show cause was issued because the debtor filed an Amended Schedule E on December 16, 2014, but did not pay the $30 amendment fee. However, the debtor paid the fee on December 31, 2014. No prejudice has resulted from the delay.

17. 14-31838-A-7 THOMAS JORDAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
ABG-1
VANDERBILT MORTGAGE AND FINANCE, INC. VS. — 12-18-14 [13]

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, Vanderbilt Mortgage and Finance, Inc., seeks relief from the automatic stay with respect to a 1994 Golden West mobile home. The movant has produced some evidence that the home has a value of approximately $36,327 ($15,000 per Schedule B) and its secured claim is approximately $55,485.

The court concludes that there is no equity in the home 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 January 14, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the home.

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 not be waived.

18. 14-32241-A-7 AYMAN ABUALNEEL — MOTION FOR
SMR-1 — RELIEF FROM AUTOMATIC STAY
EDDIE LAM VS. — 1-7-15 [23]

Final Ruling: The motion will be dismissed as moot.

The movant, Eddie Lam, seeks relief from stay as to a real property in Rocklin, California. The movant owns the property and the debtor occupies the property as a tenant pursuant to a lease agreement. The debtor defaulted on the agreement in May 2014. The movant served the debtor with a three-day notice to pay or quit in May 19, 2014. After the notice period expired, the movant filed an unlawful detainer action against the debtor on June 9, 2014. On July 11, 2014, the parties entered into a stipulation for the debtor to continue occupying the premises, provided the rent for August through November 2014 was paid timely. The debtor defaulted under the stipulation agreement in November 2014 and a judgment for possession was entered against the debtor on December 5, 2014. The debtor filed the instant bankruptcy case on December 19, 2014. The movant is seeking termination of the stay in order to obtain possession of the property. The movant is also seeking a declaration that the stay is no longer in effect under 11 U.S.C. § 362(b)(22).

The motion will be dismissed as moot because the case was dismissed on January 21, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). No in rem or retroactive stay relief has been requested.

19. 14-30749-A-7 LINNEA ARK — MOTION FOR
APN-1 — RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. — 12-23-14 [13]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2006 Lexus RX330 vehicle. In the schedules and statements, the vehicle is identified as a 2007 Lexus RX350.

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 October 30, 2014 and a meeting of creditors was first convened on December 9, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 29. 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 has not reaffirmed the debt secured by the vehicle. 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 on January 8, 2015, 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. The court also notes that the trustee filed a "no-asset" report on December 10, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on January 8, 2015.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

20. 14-29953-A-7 KRISTA EKLUND — MOTION TO COMPEL ABANDONMENT
CYB-1 — 12-24-14 [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 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 in North Highlands, California. The entire equity in the property has been claimed as 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 $190,000. Dockets 17 & 18. The property is encumbered by a single mortgage in favor of Wells Fargo Home Mortgage in the approximate amount of $114,248. This leaves $75,752 in equity. The debtor has claimed a $100,000 exemption pursuant to Cal. Code Civ. Proc. § 704.730 in Schedule C.

Given the value of the property, the encumbrances against the property and the debtor's exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

21. 12-41763-A-7 ANTHONY/SANDY GRECO — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HSM-4 — 12-22-14 [106]

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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of

$34,431.50 in fees and $189 in expenses, for a total of $34,620.50. This motion covers the period from April 15, 2013 through January 26, 2015. The court approved the movant's employment as the trustee's attorney on May 15, 2013. In performing its services, the movant charged hourly rates of $295, $300, $380 and $390.

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 the debtor's schedules, statements and other documents, (2) analyzing and advising the trustee about various assets of the estate, (3) preparing and prosecuting a motion to abandon an asset, (4) responding to defeat the debtor's abandonment motion, (5) negotiating with the debtor and other parties about the sale of some assets, (6) negotiating a complex agreement for the sale of assets as a package, (7) preparing and prosecuting a motion to sell, (8) defending the debtor's various objections to the motion (including to the proposed breakup fee, the overbidding process, etc.), (9) defending Bank of America's objection to the sale, (10) assisting the buyer in the performance of due diligence, (11) preparing and filing supplemental pleadings in support of the sale motion, about tax consequences, price allocation, etc., (12) appearing at court hearings, including at the overbidding, (13) preparing documents for trustee to effectuate sale, (14) assisting the estate with the closing of escrow, and (15) 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.

22. 14-30467-A-7 DONALD/JILL POLGLASE — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 12-17-14 [11]
U.S. BANK, N.A. VS.

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

The motion will be granted.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Auburn, California. The property has a value of $40,000 and it is encumbered by claims totaling approximately $147,413. The movant's deed is the only deed against the property and secures a claim of approximately $145,897.

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 December 22, 2014. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

23. 10-40477-A-7 MICHAEL/STACIE RODRIGUEZ — MOTION TO AVOID JUDICIAL LIEN
MJR-2
VS. AMERICAN EXPRESS CENTURION BANK
1-13-15 [38]

Final Ruling: The motion will be dismissed without prejudice because it was filed and served only 13 days prior to the January 26, 2015 hearing on the motion, in violation of Local Bankruptcy Rule 9014-1(f)(2) and (3), which requires at least 14 days' notice of the hearing on a motion, absent an order shortening time from the court. Local Bankruptcy Rule 9014-1(f)(3). The motion was filed and served on January 13, 2015, 13 days prior to the January 26 hearing. Dockets 38 & 42. And, the movant has not obtained an order shortening time to permit the motion to be filed and served on less than 14 days prior to the hearing. Accordingly, the motion will be dismissed without prejudice.

24. 14-27980-A-7 GKUBI SMART — ORDER TO SHOW CAUSE
1-5-15 [88]

Final Ruling: The order to show cause will be discharged.

This order to show cause was issued because the debtor filed a Motion to Compel Abandonment on December 18, 2014 but did not pay the $176 filing fee. However, the debtor paid the fee on January 8, 2015. No prejudice has resulted from the delay.

25. 14-27980-A-7 GKUBI SMART — MOTION TO COMPEL ABANDONMENT
PK-1
12-18-14 [74]

Final Ruling: The motion will be dismissed without prejudice because there is

no evidence that the motion was served on all creditors as required by Fed. R. Bankr. P. 6007(a). The only proof of service for the motion indicates that only the trustee, counsel for the trustee, and the United States Trustee were served with the motion. Docket 78 at 2; see also Dockets 3 & 14 (listing approximately 36 creditors).

26. 14-28687-A-7 LYNN WILKINSON — MOTION TO AVOID JUDICIAL LIEN
LLT-1
VS. PORTFOLIO RECOVERY ASSOCIATES, L.L.C. — 12-16-14 [13]

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 Portfolio Recovery Associates, LLC for the sum of $10,792.30 on June 26, 2014. The abstract of judgment was recorded with Sacramento County on July 29, 2014. That lien attached to the debtor's residential real property in Citrus Heights, 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 $288,625 as of the petition date. Dockets 15 & 1. The unavoidable liens totaled $261,024 on that same date, consisting of a single mortgage in favor of Ocwen. Dockets 15 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $27,601 in Schedule C. Dockets 15 & 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).

27. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
RAS-1
VS. CAPITAL ONE BANK, N.A. AND COUNTY OF SAN JOAQUIN — 12-16-14 [55]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in

support of the matter on calendar.

Also, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion does not contain a unique docket control number. The debtor's counsel keeps recycling docket control numbers he has used in the past. For instance, the docket control number for this motion is identical to the docket control numbers for the debtor's two prior lien avoidance motions. Dockets 14, 37, 55. This sows confusion about which pleadings pertain to which motion.

28. 14-22097-A-7 JUSTIN ELLIOTT
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-22-14 [58]

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., Inc., seeks relief from the automatic stay with respect to a 2008 Toyota Sequoia vehicle.

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

The petition here was filed on February 28, 2014 and a meeting of creditors was first convened on April 1, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than March 30, 2014. 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 has not reaffirmed the debt. 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 on May 1, 2014, 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 May 1, 2014.

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.