UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 30, 2017 at 10:00 a.m.

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

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 27, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 13, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 21, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-38
VS. GABRIELA MERCADO — 12-13-16 [1080]

Tentative Ruling: The objection will be sustained.

The trustee objects to the priority claim of Gabriela Mercado for $6,220.50, filed on February 1, 2016, asserted under 11 U.S.C. § 507(a)(4), including $940.50 in back wages and $5,280 in penalties. The bases for the objection is that the proof of claim is untimely, as it was filed after the non-governmental bar date of October 25, 2012, and that there is no basis for the priority status of the claim.

Ms. Mercado opposes the objection, contending that the she was not noticed with the April 30, 2012 bankruptcy filing.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

"*(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if . . . .*"

First, Ms. Mercado's opposition is untimely as it was filed on January 19, 2017, only 11 days prior to the January 30 hearing on the objection. This objection was brought pursuant to Local Bankruptcy Rule 3007-1(b)(1)(A), which requires oppositions to be filed at least 14 days prior to the hearing. The objection was served and filed on December 13, 2016, 48 days prior to the January 30, 2017 hearing on the objection. Dockets 1081 & 1084 (notifying Ms. Mercado of the 14-day deadline for oppositions). Hence, Ms. Mercado's opposition should have been filed at least 14 days prior to the hearing. Docket 1148. As such, the opposition will be stricken as tardy.

Second, even if not stricken, the opposition is devoid of any evidence, such as a declaration, establishing its factual assertions.

Third, assuming the assertions of fact in the opposition are true, it is still without merit. The proof of claim does indicate that the back wages of $940.50 were earned within the earlier of 180 days before the date of petition filing or the date of cessation of the debtor's business. While a proof of claim is presumed to be prima facie valid, the trustee cannot be expected to prove a false negative. If the claim is indeed based on section 507(a)(4), it should be clear from the proof of claim what is the basis for the claim under that section. The court will disallow the priority classification of the $940.50 part of the claim. It will be classified as a general unsecured claim.

The court will disallow also the penalty portion of $5,280 as priority.

Section 507(a)(4) does not afford priority status to penalties.

Finally, according to the court's records, Ms. Mercado was served with the notice of the commencement this case on May 4, 2012 at 6105 E. Sahara Ave. 136, Las Vegas, NV 89142-1660, which is the same as her address given in her opposition. Docket 1148.

The address for the notice of bankruptcy case is the same as the address in the proof of claim, both in the proof of claim form executed by her on February 1, 2016 and also in the attached certificate of mailing identifying where she was served on February 25, 2013 by the Nevada Labor Commissioner with the Commissioner's order against the debtor. Docket 10 at 7; POC 248 at 1; POC 248-1 at 3.

The address for the notice of bankruptcy case is also identical to the address at which Ms. Mercado was served with many other pleadings in this bankruptcy case, before the October 25, 2012 claims bar date, including, without limitation:

- a motion to abandon served on June 18, 2012 (Docket 89 at 28);

- a motion to reject leases served on June 18, 2012 (Docket 95 at 28);

- a motion for an administrative claim served on June 19, 2012 (Docket 111 at 25);

- a supplement to motion to reject leases served on June 26, 2012 (Docket 131 at 28);

- a motion to abandon served on June 26, 2012 (Docket 134 at 28).

And, the court sees nothing on the docket indicating that mail to Ms. Mercado was returned as undeliverable. This address was active in 2012, 2013, 2016, and continues to be active in 2017. The court does not believe that Ms. Mercado did not receive timely and adequate notice of this bankruptcy case and of the deadline to file her proof of claim, October 25, 2012.

The claim is untimely and it fails to establish that the wages demanded were earned during the period of time that might entitle them to priority under section 507(a)(4). Even if the wages were entitled to priority treatment, the penalties would not.

The objection will be sustained.

2. 13-35835-A-7 GREG MASTERSON
14-2091
TAYLOR V. MASTERSON

ORDER FOR
APPEARANCE AND EXAMINATION
(GREG MASTERSON)
11-29-16 [39]

Tentative Ruling: None. The judgment debtor shall appear and be sworn in prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

3. 16-23040-A-7 MARK TARASOV
MS-1

AMENDED MOTION TO
CONVERT CASE
1-13-17 [70]

Tentative Ruling: The motion will be denied without prejudice.

The court continued the hearing on this motion from January 17 in order for the debtor to supplement the record. The debtor has filed additional papers in support of the motion.

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 have regular income and owe, on the date of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

The debtor has noncontingent, liquidated secured debt in amount less than $1,149,525 (actual amount of all secured debt is $475,341.52) and noncontingent, liquidated unsecured debt in amount less than $383,175 (actual amount of all unsecured debt is $189,306).

However, the motion will be denied.

The debtor claims to have $150 in regular monthly net income. Docket 72, Amended Schedule J. Yet, the court is not convinced that the debtor's income is sufficiently regular for chapter 13 relief eligibility purposes. The debtor's monthly income includes $969.75 in "pro rated tax refunds." Docket 72, Schedule I. Pro rating a tax refund is not regular monthly income. Tax refunds are not received monthly. They are received only once in the year, for the prior tax year. They are also uncertain and vary from year to year. Even a slight decrease in the expected tax refund would eliminate the debtor's positive net monthly income of $150.

The court is also perplexed at how the debtor could possibly expect to receive nearly $12,000 as a tax refund when his only source of income is $1,508 in unemployment compensation payments. Docket 72, Schedule I. To the court, the pro rated monthly tax refund figure of $969.75 appears patently unrealistic.

The court is not persuaded of the regularity and actuality of the debtor's income. As such, the debtor has not demonstrated eligibility for chapter 13 relief.

4. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION TO SELL AND TO APPROVE COMPENSATION OF BROKER
PA-7 — 12-20-16 [126]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and free and clear of liens for $363,000 the estate's interest in a real property in Truckee, California to Gary Massetani, Karen Massetani, and Nicolas Massetani. The trustee also asks for payment approval of the 6% real estate broker's commission, asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h), and asks for a good faith finding under 11 U.S.C. § 363(m).

The sales price does not include a buyer's premium of $21,250 that is to be paid by the buyers to the trustee, for the benefit of the estate.

The buyers will also pay $9,734.14 to cover escrow fees, document preparation and mobile signing fees, government recording charges, transfer taxes, outstanding HOA dues ($6,814.84), hazards disclosures, sewer test fees, and taxes and assessments to Tahoe-Truckee Sanitation.

The sale is free and clear of the only encumbrance on the property, of Wells Fargo Bank, in the scheduled amount of $386,567. Wells Fargo Bank has agreed to accept $338,820.75 in full satisfaction of its claim.

From the $363,000 purchase price, Wells Fargo Bank has authorized the payment of county taxes in the amount of $1,861.75, signing fee in the amount of $30, escrow fees in the amount of $507.50, and real estate commissions in the total amount of $21,780 or 6% of the purchase price. After payment of these, $338,820.75 is left to be paid on account of Wells Fargo Bank's claim.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The sale will generate $21,250 for distribution to creditors of the estate. No negative tax consequences are anticipated from the sale. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given the consent to the sale by Wells Fargo Bank. The court will approve the sale free and clear only of the claim held by Wells Fargo Bank, as no other encumbrances have been identified by the motion.

And, the court will approve the sale free and clear of Wells Fargo Bank's claim only to the extent Wells Fargo Bank consents to the sale. The bank's conditional non-opposition identifies a purchase price ($365,000) different from the price identified by the motion. Docket 134.

The sale is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment. The court will also make a good faith finding as to the stalking horse buyers. See Docket 128 at 6-7.

5. 13-35308-A-7 DOROTHY PARENT
15-2229
FUKUSHIMA V. SWENDEMAN

MOTION TO SUBSTITUTE PARTY AND CONTINUE TRIAL O.S.T.
1-18-17 [104]

Tentative Ruling: The motion will be granted.

The plaintiff and chapter 7 trustee in the underlying chapter 7 case, Alan Fukushima, seeks substitution of defendant Dorothy Swendeman, who passed away in November 2016, with her successor in interest and daughter Cynthia Swendeman. The plaintiff also seeks continuation of the February 22, 2017 trial in this adversary proceeding, to allow service of Cynthia Swendeman and to provide her with time to respond and participate in the case.

Fed. R. Civ. P. 25(a)(1) & (3), as made applicable here by Fed. R. Bankr. P. 7025, prescribes that:

"*(a)* Death. *(1)* Substitution if the Claim Is Not Extinguished. *If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.*

"*(2)* Continuation Among the Remaining Parties. *After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.*

"*(3)* Service. *A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.*"

Given the passing of defendant Dorothy Swendeman and given that her claim against the underlying chapter 7 bankruptcy estate and the real property here has not been extinguished, the court will order substitution of Dorothy Swendeman with Cynthia Swendeman, the apparent successor in interest to the deceased. Cynthia Swendeman will be substituted into the action both individually and as a trustee of the Robert E. Swendeman and Dorothy B. Swendeman 2004 Trust. By ordering the substitution, the court is not making a determination that Cynthia Swendeman is indeed a successor in interest to Dorothy Swendeman.

This motion was filed on January 18, 2017, within the 90-day deadline of the December 16, 2016 service of Dorothy Swendeman's notice of death. Docket 96; see Fed. R. Civ. P. 25(a)(1).

The court will also continue the February 22 trial to a date in the future, after consulting with the parties at the hearing on this motion. The motion

will be granted.

FINAL RULINGS BEGIN HERE

6. 16-27315-A-7 ASHA ROOP — MOTION FOR
APN-1 — RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. — 12-21-16 [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 2012 Chrysler Town & Country vehicle.

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

The petition here was filed on November 2, 2016 and a meeting of creditors was first convened on November 28, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 28. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on November 28, 2016.

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 15, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on November 28, 2016.

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.

7. 15-29120-A-7 DAVID/CLAIRE SCHOOLEY — MOTION TO APPROVE COMPROMISE
SCB-8 — 12-29-16 [32]

Final Ruling: The motion will be dismissed without prejudice because it violates Local Bankruptcy Rule 9014-1(f)(1), pursuant to which the motion was filed and served. Instead of informing parties in interest in the notice of hearing that written oppositions must be filed and served at least 14 days prior to the January 30, 2017 hearing on the motion, the notice of hearing informs them that written oppositions must be filed and served no later than January 13, 2017, 17 days prior to the January 30 hearing. Docket 33. This provided parties in interest with less notice of the motion and less opportunity to prepare and file opposition, than prescribed by Rule 9014-1(f)(1), thus potentially discouraging and/or disabling them from filing responses to the motion. Accordingly, the motion will be dismissed without prejudice.

8. 15-29033-A-7 FRANCISCO PENA — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 12-21-16 [112]
U.S. BANK, N.A. VS.

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

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

The movant, U.S. Bank, seeks relief from the automatic stay as to a real

property in Hayward, California.

Given the entry of the debtor's discharge on May 3, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $379,900 and it is encumbered by claims totaling approximately $646,071. The movant's deed is in first priority position and secures a claim of approximately $587,725.

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.

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

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

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

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

9. 16-28335-A-7 TEHAN FERGUSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 12-30-16 [11]
FRITZIE BERTUFLO 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, Fritzie Bertuflo, trustee of the Fritzie Bertuflo Revocable Trust,

seeks relief from the automatic stay as to a real property in Elk Grove, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in October 2016. The movant served the debtor with a notice to pay or quit on December 15, 2016. The period in the notice expired on December 19, 2016. The debtor filed this bankruptcy case on December 20, 2016.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, he has defaulted under the lease agreement by failing to pay the rent due from October 2016 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the notice to pay or quit served on him pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise his state law remedies to obtain possession of the property.

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

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

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

10. 16-25340-A-7 JEFFREY WICK — MOTION TO AVOID JUDICIAL LIEN
JCK-1
VS. SYNCHRONY BANK
12-22-16 [14]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Synchrony Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution. The proof of service accompanying the motion indicates that although the notice was addressed to an officer of the creditor, the creditor's agent for service of process—CT Corporation System—was also named in the notice. This does not satisfy Rule 7004(h).

And, while the debtor served Synchrony's attorney, unless the attorney agreed to accept service, 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).

Further, in the event the motion is reset for a hearing, the debtor should note that there is no evidence establishing the debtor's entitlement to the $175,000 exemption in the subject property. The debtor must establish entitlement to the claimed exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 16.

11. 16-26740-A-7 MICHAEL GRAVES
AMM-1
NATIONSTAR MORTGAGE, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-16-16 [17]

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

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

The movant, Nationstar Mortgage, L.L.C., seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on January 24, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $185,000 and it is encumbered by claims totaling approximately $195,812. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 18, 2016.

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

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

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

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

12. 16-28356-A-7 DORA MORENO — ORDER TO SHOW CAUSE 1-6-17 [16]

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 did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on January 17, 2017. No prejudice has resulted from the delay.

13. 16-27779-A-7 MARVIN SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY 12-28-16 [13]
VVF-1
AMERICAN HONDA FINANCE CORP. VS.

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

The motion will be granted.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2013 Honda motorcycle. The movant has produced evidence that the vehicle has a value of $11,275 ($13,000 per Schedules A/B) and its secured claim is approximately $13,366. Docket 15.

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 27, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to 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.

14. 15-26780-A-7 ROY/DONNA PALMER
DMW-3

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
12-27-16 [82]

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

The motion will be granted.

The chapter 7 trustee, Douglas Whatley, has filed first and final motion for approval of compensation. The requested compensation consists of $12,175 in fees and $756.93 in expenses, for a total of $12,931.93. The services for the sought compensation were provided from August 31, 2015 through the present. The sought compensation represents at least 23.95 hours of services.

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

The movant will make or has made $178,500 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $12,175 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $6,425 (5% of the next $950,000 (or $128,500)). Hence, the requested trustee fees of $12,175 do not exceed the cap of section 326(a).

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

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

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

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) evaluating the debtor's interest in a real property and multiple pre-petition transactions involving the property, (4) employing professionals to assist the estate in the administration of estate assets, (5) communicating with the estate's professionals about various issues, (6) addressing repair issues at the property, (7) reviewing proofs of claim, (8) negotiating a compromise with a person holding an option to purchase the real property, (9) reviewing various pleadings and documents prepared by

the estate's professionals, (10) addressing tax issues, (11) preparing final report, and (12) preparing compensation motion.

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