UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 26, 2018 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 3, 5, 6, 11

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 MARCH 26, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 12, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 19, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

1. 17-28116-A-7 HEATHER STORY — MOTION FOR RELIEF FROM AUTOMATIC STAY
BRL-1 — 2-8-18 [10]
ROIC MONTEREY, L.L.C. VS.

Tentative Ruling: The motion will be denied.

The movant, ROIC Monterey, L.L.C., seeks relief from the automatic stay with respect to a commercial real property in Monterey, California.

The motion and the debtor's Schedules A/B & G state that the subject lease agreement is between the movant and Huna Investments, L.L.C., an entity owned by the debtor. As the debtor is not a party to the lease, the lease is not protected by the automatic stay. The debtor's interest in Huna is property of the estate, not the lease.

Because the automatic stay is not applicable, there is nothing to terminate or modify.

2. 17-27321-A-7 CANTECA FOODS, INC. — MOTION TO SELL
HSM-2 — 1-30-18 [53]

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

The chapter 7 trustee requests authority to employ West Auctions, Inc., as auctioneer for the estate. West will assist the estate with the sale of several vehicles, including:

- 2008 Freightliner truck,
- 2013 Mercedes Van (subject to a claim for $1,574.71),
- 2013 Mercedes Van (subject to a claim for $8,123.20),
- 2014 Ford Van,
- 2013 Isuzu (subject to a claim for $10,501.27),
- 2014 Isuzu (subject to a claim for $12,640.44),
- 2014 Isuzu (subject to a claim for $14,423.55),
- 2015 Isuzu (subject to a claim for $20,085.20), and
- miscellaneous equipment located at a warehouse in Redding, California.

The proposed compensation arrangement is a 12% commission along with reimbursement of expenses incurred in storing, moving, preparing for sale, and transferring title of the property, as well as mileage and lodging expenses. The movant estimates that the 12% commission will total approximately $8,520 to $12,000, based on estimated gross sales proceeds of $71,000 to $100,000, while expenses are expected to be approximately $3,250.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

With one exception, the court concludes that the terms of employment and compensation are reasonable. The court is unclear how or why the proposed mileage and lodging expenses of West are reasonable and necessary. Among the other proposed expenses, West will be incurring asset moving expenses. The

mileage expenses appear to be duplicative of the moving expenses. Also, the court is unclear why West would be incurring lodging expenses. Dennis West's declaration does not explain this. Docket 55.

West is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Its employment will be approved.

The movant also asks the court to approve the sale of the assets.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate.

The trustee anticipates that the estate will realize sales proceeds between $22,468 and $47,988, after satisfaction of the liens against the assets.

Hence, with one exception, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

The court will not approve the sale of the 2013 Isuzu vehicle, as West's estimate of value for that vehicle, after satisfying the lien, is entirely within the negative range, negative $5,501.27 to negative $2,501.27. Docket 53 at 3.

The remainder of the assets may be sold at an auction held by West, as proposed by the motion.

The motion will be granted in part and denied in part.

3. 17-27321-A-7 CANTECA FOODS, INC. MOTION TO ABANDON
HSM-3 1-30-18 [59]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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.

The trustee wishes to abandon the estate's interest in:

(1) a leased 2014 Isuzu vehicle, with a value of between $20,000 and $28,000, but subject to a payoff of $31,705,

(2) a leased 2014 Isuzu vehicle, with a value of between $20,000 and $28,000, but subject to a payoff of $38,907,

(3) a leased 2014 Isuzu vehicle, with a value of between $20,000 and $28,000,

but subject to a payoff of $37,324,

(4) a leased 2014 Isuzu vehicle, with a value of between $20,000 and $28,000, but subject to a payoff of $37,324,

(5) a purchased 2015 Isuzu vehicle, with a value of between $20,000 and $30,000, but subject to an encumbrance of $32,833,

(6) two purchased 2015 Isuzu vehicles, with a value of between $40,000 and $60,000, but subject to a combined encumbrance of $74,606, and

(7) a purchased 2017 Toyota Prius vehicle, with a value of between $21,000 and $26,000, but subject to an encumbrance of $24,050.

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

Given the value of each vehicle and the respective payoffs / encumbrances, the court concludes that the vehicles are of inconsequential value to the estate. The motion will be granted.

4.	17-26125-A-11 GL-1 5060 MONTCLAIR PLAZA LANE OWNER, L.L.C. VS.	FIRST CAPITAL RETAIL, L.L.C.	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-17-17 [62]

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

The movant, 5060 Montclair Plaza Lane Owner, L.L.C., seeks to terminate the automatic stay as well as retroactive, and in rem relief with respect to a commercial real property in Montclair, California, where the debtor operates a store. The debtor has been leasing the property from the movant. The debtor failed to make pre-petition lease payments to the movant from May 2017 onward.

The movant served the debtor with a ten-day notice to pay or quit on July 27, 2017. The notice declared the lease terminated and forfeited. The notice expired and the movant filed an unlawful detainer action against the debtor on August 22, 2017. On September 14, the debtor filed this case. Without the movant knowing of the bankruptcy, it obtained the debtor's default on September 19, 2017.

The debtor has no ownership interest in the property. The debtor is a tenant in this nonresidential real property. The debtor is unable to assume the lease for the property because its tenancy interest terminated upon expiration of the ten-day notice, pre-petition, on or about August 7, 2017. 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).

Accordingly, there is cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to recover possession of the property in state court.

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 are awarded because the movant is not an over-secured

creditor. See 11 U.S.C. § 506.

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

The court will deny retroactive relief from stay with respect to the requested "[a]ny postpetition acts taken by Movant." Docket 62 at 8. The court does not grant blanket retroactive relief as to "any" post-petition acts of the movant. The only specific post-petition act mentioned in the motion is the obtaining of the debtor's unlawful detainer action default on September 19, 2017. But, as the motion does not say when and how the movant first learned of this bankruptcy case, the court cannot be certain that the movant did not know of the bankruptcy when it obtained the debtor's default. Retroactive relief will be denied.

In rem relief will be denied as well. The motion, without authority, seeks relief from stay "in any bankruptcy case commenced by or against any debtor who claims any interest in the Premises for a period of 180 days from the hearing of this Motion" and that "[t]he order is binding in any other bankruptcy case purporting to affect the Property filed not later than 2 years after the date of entry of such order." Docket 62 at 8.

The motion does not even cite, much less discuss 11 U.S.C. § 362(d)(4), which this language implicates. Nor is there evidence that section 362(d)(4) applies.

In rem relief will be denied under 11 U.S.C. § 105 as well, as such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

5. 17-23853-A-7 ELIZABETH SETTLES — MOTION TO ABANDON
HSM-3 — 2-12-18 [91]

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

The motion will be granted.

The trustee seeks an order abandoning the estate's interest in the debtor's membership interest in Eagles Rest Properties LLC.

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

The trustee has demonstrated that the records are burdensome or of inconsequential value to the estate. Docket 93. The records are of no monetary or otherwise beneficial value to the estate. The trustee is also

concerned about the risk of potential liability to the estate due to tax reasons.

This is sufficient to order the membership interest's abandonment.

6. 17-26473-A-7 JOHN/MISTIE CHRISTOPHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
JPMORGAN CHASE BANK, N.A. VS. — 1-31-18 [20]

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

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

JPMorgan Chase Bank, N.A. seeks relief from the automatic stay with respect to real property located at 4825 17th Avenue in Columbus, Georgia. Movant alleges that cause exists to grant the motion given that debtor has failed to make three post-petition payments and the property lacks sufficient equity to protect movant's interest.

Given the entry of debtor's discharge on February 20, 2018, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to debtor.

As to the trustee, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded. Debtor has not made three post-petition payments to movant. The court also notes that the trustee has filed a statement of nonopposition on February 12, 2018. Based on this, the court finds cause for the granting of relief from stay.

The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived.

7. 16-28083-A-7 STEPHEN LEMOS — MOTION TO SELL
BHS-3 — 1-24-18 [42]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, the estate's interest in a 2004 Jeep Cherokee and a 2015 Honda Accord for $4,000 to the debtor, Stephen Lemos. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The 2004 Jeep Cherokee is in fair condition with approximately 110,000 miles

with a scheduled value of $3,650. The 2015 Honda Accord is in good condition with approximately 4,000 miles with a scheduled value of $21,975 subject to a secured debt of $17,694. The debtor has claimed an exemption in the Honda in the amount of $3,050 under § 704.010. The trustee's proposed sales price for both vehicles is $7,050 - less the exemption amount of $3,050 - for net to the estate of $4,000. After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property.

Overbidding shall start with overbids in minimum $100 increments. Bidders must qualify with a $7,150 deposit.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

8. 16-28083-A-7 STEPHEN LEMOS — MOTION TO SELL
BHS-4 — 1-24-18 [47]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, for $85,000, the estate's interest in a $178,000 promissory note with interest only payments at 3% secured as the second deed of trust by real property located at 4911 Brand Way in Sacramento, California to the debtor, Stephen Lemos. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The obligors of the subject property are the daughter and son-in-law of the debtor. Monthly interest only payments on the subject property are $445 with a due date of December 1, 2046. The trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property.

Overbidding shall start with overbids in minimum $100 increments. Bidders must qualify with a $5,100 deposit.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

9. 16-28083-A-7 STEPHEN LEMOS — MOTION TO SELL
BHS-5 — 1-24-18 [52]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $40,000 the estate's interest in real property located at 4216 Corona Way in Sacramento, California to the debtor, Stephen Lemos. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The property has a scheduled value of $450,000 subject to a secured debt in the amount of $255,217 and a claim of exemption in the amount of $175,000 under § 704.730. The trustee believes the property has a fair market value of $511,000.

After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property. The property is in fair condition with deferred maintenance, including pest damage in the basement in addition to roof damage.

Overbidding shall start at $215,500 with overbids in minimum $500 increments.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

10. 16-28083-A-7 STEPHEN LEMOS — MOTION TO SELL
BHS-6 — 1-24-18 [57]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is," "where is," without representations or warranties, subject to all encumbrances, for $90,000 the estate's one-half interest in real property in Lake Tahoe, California to Global Capital Concepts, Inc. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The debtor and his non-filing spouse have a 50% interest in the property, held in the name of "The Stephen D. and Susan C. Lemos Trust Dated November 3, 2011." The property has a scheduled value of $374,887 subject to a secured debt in the amount of $165,259. The trustee believes the entire property has a fair market value of $452,000. After analyzing the liens and condition of the property, the trustee has concluded that the proposed purchase price accurately reflects the value of the estate's interest in the property.

Overbidding shall start at $90,500 with overbids in minimum $500 increments. Overbidders must qualify with a $5,500 deposit.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

11. 18-20286-A-7 GARY BASS — MOTION TO VACATE DISMISSAL OF CASE
BAS-1 — 2-8-18 [16]

Tentative Ruling: The motion will be granted.

The debtors ask the court to vacate the February 6 dismissal of the case.

This case was filed on January 18, 2018. On January 19, the court issued a

notice of incomplete filing, stating that the following documents were due by February 1: attorney's disclosure statement and Form 122A-1 Statement of Monthly Income. See Docket No. 3.

The debtor filed only the Statement of Monthly Income on January 23. As to the attorney's disclosure statement, counsel for the debtor remains unsure as to the reason for his bankruptcy software (Bestcase) failure to include the attorney's disclosure statement to the petition, as it is accustomed to doing. The case was dismissed on February 6, and the debtor filed the correct disclosure statement on February 7. Given that only the attorney's disclosure statement was not filed by the February 1 deadline, the court concludes that vacating the dismissal would cause no prejudice to anyone. Hence, the court will vacate the February 6 dismissal.

FINAL RULINGS BEGIN HERE

12.	17-24100-A-7 DNL-4	HOWARD DAY AND PHANTIP BOUCHER	MOTION TO EMPLOY 1-29-18 [69]

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 trustee requests authority to employ Bacheki, Crom & Co., L.L.P. as accountant for the estate. Bacheki will advise the estate about tax liabilities and prepare estate tax returns. The proposed compensation is a flat fee of $1,600. The trustee is seeking approval of the compensation without the necessity of a further court order.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Bacheki is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

13.	17-24100-A-7 DNL-5	HOWARD DAY AND PHANTIP BOUCHER	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 1-29-18 [74]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468

F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $22,815 in fees and $418.49 in expenses, for a total of $23,233.49. This motion covers the period from July 1, 2017 through January 29, 2018. The court approved the movant's employment as the trustee's attorney on July 26, 2017. In performing its services, the movant charged an hourly rate of $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the administration of a real property, (2) reviewing and analyzing the claims secured by the property, (3) researching issues pertaining to the priority of claims against real property, (4) negotiating a settlement agreement with the debtor and two of the claimants against the property, resolving the exemption and creditor claims, (5) preparing and prosecuting a motion for approval of the settlement, (6) assisting the trustee with the sale of the property, (7) preparing and prosecuting a motion to sell the property, (8) assisting the trustee with execution of the terms of the settlement agreement, (9) assisting the trustee with the general administration of the estate, and (10) 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.

14. 13-30212-A-7 ARMANDO/NORA COTA — MOTION FOR ADMINISTRATIVE EXPENSES
DMW-6 — 1-25-18 [79]

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 trustee requests allowance of payments of post-petition estate income tax liability for the 2017 tax year as follows: $19,500 to the IRS and $6,000 to the California Franchise Tax Board.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on August 1, 2013. The tax liability in question was incurred in 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

15. 17-27525-A-7 SUKHWINDER BIHALA — MOTION TO AVOID JUDICIAL LIEN
RSG-1
VS. BMO HARRIS BANK, N.A. — 1-23-18 [14]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, BMO Harris Bank, N.A., 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 to an officer of the institution.

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, manager, agent for service of process." Docket 18. This does not satisfy Rule 7004(h).

And, while the debtor served BMO'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).

16. 17-28326-A-7 MARZUQ/CATRINA RASHADA — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
GATEWAY ONE LENDING & FINANCE VS. — 1-22-18 [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, Gateway One Lending & Finance, seeks relief from the automatic stay with respect to a 2006 BMW 750 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 December 26, 2017 and a meeting of creditors was first convened on January 23, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than January 23. The debtor did not file a statement of intention on the petition date or afterward, pertaining to the vehicle. The debtor has not indicated an intent to surrender the vehicle, redeem the vehicle, or reaffirm the debt secured by the vehicle.

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, the debtor has not filed a statement of intention pertaining to the vehicle. 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 January 23, 2018, the date of 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 February 13, 2018, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on January 23, 2018.

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.

17. 17-27036-A-7 CANDACE NORTHERN — MOTION FOR RELIEF FROM AUTOMATIC STAY
EMM-1 — 1-18-18 [20]
THE BANK OF NEW YORK MELLON VS.

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

The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $182,849 and it is encumbered by claims totaling approximately $257,916. 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 December 12, 2017.

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

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

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.

18. 16-22482-A-7 TIMOTHY MUNSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AAR-1 — 1-16-18 [27]
SHANON CABEBE VS.

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that the court may resolve motions without oral argument in the event no timely written opposition is

filed. Because less than 28 days of notice of the hearing was given (14 days' notice was given), Local Bankruptcy Rule 9014-1(f)(2) is applicable. It specifies that no written opposition need be filed. Instead, the debtor, creditors, trustee, United States Trustee, and any other potential respondent may appear at the hearing to contest the motion. By informing respondents that written opposition was required, and that without it they might not be heard at the hearing, the notice may have deterred a respondent from appearing.

19. 17-24884-A-7 SAINI TRUCKING INC. MOTION FOR
SS-3 RELIEF FROM AUTOMATIC STAY
CHRISTOPHER CHAVEZ VS. 1-19-18 [46]

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, Christopher Chavez, seeks relief from the automatic stay to proceed in state court with his personal injury lawsuit against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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

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

20. 18-20187-A-7 RANDY AMORE MOTION FOR
SMR-1 RELIEF FROM AUTOMATIC STAY
SACRAMENTO WINDING WAY APTS. L.P. VS. 1-24-18 [19]

Final Ruling: The motion will be dismissed as unnecessary because the case was dismissed on February 12, 2018, dissolving the automatic stay. See 11 U.S.C. § 362(c)(2)(B). Retroactive or relief under 11 U.S.C. § 362(d)(4) has not been requested.