UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 5, 2016 at 10:00 a.m.

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

4

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 AUGUST 1, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 18, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 25, 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. 14-28027-A-7 MICHAEL BISCH — MOTION FOR TURNOVER OF PROPERTY
SLC-1 — 5-31-16 [28]

Tentative Ruling: The motion will be denied.

The trustee seeks an order directing the debtor to turn over to her:

(A) $8,000 the debtor purportedly received post-petition from Trackside, L.L.C., on account of a purported pre-petition agreement with Trackside, L.L.C., pertaining to the sale of a commercial real property which closed escrow after the August 6, 2014 petition date; and

(2) $28,000 the debtor "would have received" from his BV64, Inc. corporation, which received the funds as a real estate broker commission in connection with the sale of the same real property.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

"If a debtor demonstrates that [he] is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman at 202 (quoting Rynda v. Thompson (In re Rynda), Case Nos. NC-11-1312-HDoD, 09-41568, 2012 WL 603657, at *3 (B.A.P. 9th Cir. Jan. 30, 2012)).

The motion will be denied. The debtor received the $8,000 sum post-petition, on October 27, 2014, pursuant to the September 3, 2014 operating agreement of Trackside, L.L.C., whose articles of organization were filed with the California Secretary of State on August 15, 2014. Docket 40 at 9 & 31.

In other words, the debtor's entitlement to the $8,000 was pursuant to a post-petition agreement and not a pre-petition agreement. Neither the debtor, nor the estate had an interest in the $8,000 sum as of the August 6, 2014 petition date.

Further, the $28,000 sum was received by the debtor's corporation, BV64, Inc.,

on October 3, 2014, as a real estate broker fee relating to the sale of the real property, which sale was consummated pursuant to an August 15, 2014 purchase and sale agreement.

The court cannot disregard the debtor's corporate entity, BV64, Inc. and order the debtor to turn over to the trustee funds received by his corporation. The court will not make alter-ego or substantive consolidation adjudications on a motion. Such adjudications require an adversary proceeding. Fed. R. Bankr. P. 7001(2).

Additionally, the $28,000 fee was paid under the terms of a post-petition agreement, dated August 15, 2014. Docket 39. Although that agreement is styled as an amendment to an earlier, pre-petition purchase and sale agreement, that pre-petition agreement had expired pre-petition—on July 7, 2014—and was no longer in effect as of the August 6, 2014 petition date. Docket 38 at 2 (stating that closing of the sale was to take place "not later than July 7, 2014").

Thus, even if the debtor had some direct interest in the $28,000 broker fee, that interest arose post-petition. The court is not persuaded that the estate has an interest in the $8,000 and $28,000 sums.

2. 15-24833-A-7 IGOR PETROVSKI — MOTION TO VACATE DISMISSAL OF CASE 5-23-16 [35]
CJJ-3

Tentative Ruling: The motion will be denied.

The debtor is seeking the setting aside of the court's September 18, 2015 order dismissing the case. The court dismissed the case due to the debtor's and his counsel's failure to appear at the first continued meeting of creditors on August 20, 2015. Docket 20.

The debtor did nothing to set a hearing on the trustee's motion to dismiss. The motion was served on the debtor and his counsel, Charnel James, on August 20, 2015. Docket 17. Mr. James was served at 500 Olive Street, Marysville, CA 95901, an address that was his correct address prior to May 23, 2016, when he filed a change of address request with the court. Id. Nevertheless, the debtor did not file an opposition to the motion, to set the dismissal motion for a hearing. See Docket 15.

Further, the motion does not cite or discuss Fed. R. Civ. P. 60 even though it sets the standard for setting aside of court orders and judgments. The motion states nothing about why the debtor did nothing for over six months, to seek the setting aside of the dismissal. "A motion under Rule 60(b) must be made within a reasonable time . . . ." Fed. R. Civ. P. 60(c).

After the September 18, 2015 dismissal, the debtor did nothing until April 5, 2016, when he filed a motion to reopen the case, even though he admits to receiving the notice of the September 18, 2015 dismissal. Docket 37 at 2. The debtor did nothing to seek relief from the dismissal of the case for six months. This delay has not been explained and it is not reasonable.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly

discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The sole reason given by the debtor for missing the August 20, 2015 meeting of creditors is "a miscommunication with the trustee office." Docket 35 at 2.

However, nothing in the record indicates that there was a miscommunication with the trustee. Neither the debtor, nor his attorney appeared at the August 20 meeting. There is no evidence either of them had communicated with the trustee. And, if there was a miscommunication with the trustee, the debtor certainly had the opportunity to correct it in a response to the dismissal motion. He did not do this.

In addition, the motion gives no details about the alleged miscommunication. There are no facts, much less evidence on this point. The debtor's supporting declaration states merely that his counsel called him on August 19, 2015, one day prior to the August 20 continued meeting of creditors, informing him "that [he] was discharged, and that there were no assets in the case . . . [and] that [he] did not need to attend the scheduled meeting of the creditors." Docket 37 ¶ 8.

This statement is hearsay as it references out of court statements by the debtor's counsel, Mr. Charnel, yet there is no declaration from Mr. Charnel as to these statements in the record. Fed. R. Evid. 801(c) & 802. Also, the debtor never received a bankruptcy discharge in this case.

Finally, Rule 60(a) is not implicated here. The motion does not assert clerical mistake or a mistake arising from oversight or omission found in a judgment, order, or other part of the record.

3. 16-20856-A-7 CINDY COGIL — MOTION TO COMPEL ABANDONMENT
MMM-2 — 6-4-16 [22]

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

The debtor seeks an order compelling the trustee to abandon the estate's interest in: a rental real property in Folsom, California and "all future rents, royalties, issues, profits, revenue, income, accounts receivable, and other benefits of the Property."

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 real property has a value of $240,000. It is encumbered by a single deed of trust in the approximate amount of $261,780. Given the property's value and encumbrances, the court concludes that the property is of inconsequential value to the estate. The motion will be granted as to the real property.

The motion will be denied as to the "all future rents, royalties, issues, profits, revenue, income, accounts receivable, and other benefits of the Property." These items are not listed in Schedule B.

Assuming these future are assets are property of the estate, the court does not have evidence about their value. For instance, the court does not have information about the amount of rent collected by the debtor each month. Nor is there information about the debtor's monthly rental expenses. As such, the court cannot determine the value of the property's rents.

Finally, the motion does not explain what is included within "other benefits of the Property." The court will not speculate about this.

4. 07-24263-A-7 PAUL/ERIKA GRUENBERG — MOTION TO AVOID JUDICIAL LIEN
DLM-2
VS. GENERAL MOTORS ACCEPTANCE CORP. — 4-29-16 [32]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor Paul Gruenberg in favor of General Motors Acceptance Corporation for the sum of $15,733.03 on October 12, 2006. The abstract of judgment was recorded with Sacramento County on November 21, 2006. 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 $425,000 as of the petition date. Dockets 34 & 36. The unavoidable liens totaled $316,384 on that same date, consisting of a single mortgage in favor of World Savings. Dockets 34 & 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $150,000 in Amended Schedule C. Dockets 29, 34, 36.

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

5. 16-23681-A-7 ANA VILLAR — MOTION FOR RELIEF FROM AUTOMATIC STAY
SC-1
DUKE PARTNERS, L.L.C. VS. — 6-9-16 [9]

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

The movant, Duke Partners, L.L.C., seeks relief from stay as to a real property in Fairfield, California. The movant is the owner of the property as it purchased it at a pre-petition foreclosure sale. The movant seeks relief from stay to obtain possession of the property, under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4), contending this to be the third bankruptcy case involving the property.

The motion will be dismissed as moot with respect to the section 362(d)(1) and (d)(2) relief request, given that the case was dismissed on June 24, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B).

In addition, the court will deny in rem relief from stay under section 362(d)(4), as such relief is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

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).

FINAL RULINGS BEGIN HERE

6. 16-22508-A-7 JEANNE BURTON
AP-1
NATIONSTAR MORTGAGE, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-24-16 [11]

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

The motion will be granted.

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Red Bluff, California. The property has a value of $80,000 and it is encumbered by claims totaling approximately $165,163. 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 June 8, 2016.

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.

7. 09-39133-A-7 LARRY/ABBIGAIL CLYMER
DRE-2

MOTION TO
CONVERT CASE
6-8-16 [37]

Final Ruling: The motion will be dismissed without prejudice because it was not served on all creditors. See Fed. R. Bankr. P. 2002(a)(4), Dockets 42 &

3.

8. 15-29033-A-7 FRANCISCO PENA
CDH-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
6-7-16 [72]

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.

Hughes Law Corporation, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,463.50 in fees and $141.70 in expenses, for a total of $7,605.20. This motion covers the period from January 14, 2016 through June 3, 2016. The court approved the movant's employment as the trustee's attorney on February 16, 2016. In performing its services, the movant charged hourly rates of $75, $295 and $420.

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) preparing for and appearing at the meeting of creditors, (2) communicating with the debtor about his business and real property, (3) negotiating with the debtor about deadline extensions, (4) reviewing and analyzing documents provided by the debtor, (5) communicating with realtors about the value of a real property, (6) preparing sale and purchase agreement, (7) preparing, prosecuting and attending hearing on a motion to sell, (8) preparing, prosecuting and attending a hearing on a motion to abandon, (9) negotiating global settlement with the debtor, 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.

9. 14-24839-A-7 KENNETH/ALICIA UNG
ICE-2

MOTION TO APPROVE COMPENSATION OF TRUSTEE
6-7-16 [101]

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, Irma Edmonds, has filed first and final motion for approval of compensation. The requested compensation consists of $28,215.28 in fees and $257.69 in expenses, for a total of $28,472.97. The services for the sought compensation were provided from May 16, 2014 through the present. The sought compensation represents 45.5 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 $499,305.50 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $28,215.28 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $22,465.28 (5% of the next $950,000 (or $449,305.50)). Hence, the requested trustee fees of $28,215.28 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) assessing value of rented business premises and personal property assets at the premises, (2) working with the property manager for the cleaning of the premises and addressing potential health issues, (3) reviewing stay relief motion relating to the debtor's resindence, (4) negotiating with the debtor an agreement about the exemption claim against the property and the estate's interest in realizing a benefit from administration of the property, (5) retaining professionals, including a real estate broker, attorney and account, (6) reviewing offers, (7) negotiating the sale of the property, (8) communicating with the broker about the sale of the 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.

10. 16-21261-A-7 SETH COX
DJC-1

MOTION TO
COMPEL ABANDONMENT
6-3-16 [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 his real property in Olivehurst, California. The entire equity in the property is exempt.

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

The property has a value of $335,000. It is encumbered by a first deed of trust in favor of Specialized Loan Servicing in the amount of $258,248.85 and a second mortgage in favor of U.S. Bank in the amount of $31,949.67, for a total of $290,198.52. The debtor has exempted $100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

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

11. 16-23167-A-7 MICHELLE GOLDEN
JHW-1
FIRST INVESTORS SERVICING CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-3-16 [10]

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, First Investors Servicing Corp., seeks relief from the automatic stay with respect to a 2012 Chevrolet Impala 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 May 16, 2016 and a meeting of creditors was first convened on June 14, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 14. The debtor filed a statement of intention on the petition date, but she did not list the vehicle in it.

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 filed a statement of intention, she failed to list the vehicle in the statement. 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 June 14, 2016, 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 June 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 June 14, 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.

12. 16-21982-A-7 LORENZO SMILEY
JCW-1
THE BANK OF NEW YORK MELLON VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-26-16 [23]

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 Lathrop, California. The property has a value of $386,920 and it is encumbered by claims totaling approximately $602,150. The movant's deed is in first priority position and secures a claim of approximately $581,165.

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 April 26, 2016.

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.