UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 1, 2016 at 10:00 a.m.

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

1, 5, 6, 18

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 29, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 15, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 22, 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. 16-23509-A-7 ROGELIO/NORA DARIO — MOTION TO AVOID JUDICIAL LIEN
SNM-1
VS. CAPITAL ONE BANK (USA), N.A. — 6-9-16 [9]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor Rogelio Dario in favor of Capital One Bank for the sum of $2,324.73 on May 11, 2009. The abstract of judgment was recorded with Solano County on September 22, 2009. That lien attached to the debtor's residential real property in Fairfield, 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 $395,000 as of the petition date. Dockets 11 & 1. The unavoidable liens totaled $373,194 on that same date, consisting of a single mortgage in favor of Wells Fargo Bank. Dockets 11 & 1. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $21,806. Dockets 11 & 1.

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

2. 16-21112-A-7 KENDALL BROOKS — MOTION TO SELL, TO APPROVE COMPENSATION FOR REALTOR ETC
DNL-3 — 7-1-16 [36]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $292,000 in cash the estate's interest in a real property in Sacramento, California to Peter and Anne Frichette. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission to the estate real estate broker, Coldwell Banker.

The property is subject to a mortgage in favor of Bank of the West in the amount of $150,477.98 and the debtor's exemption claim in the amount of $75,000.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The trustee anticipates the sale to generate approximately $40,000 for the benefit of the estate and unsecured creditors, after payment of encumbrances, the debtor's exemption and costs of sale. 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) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

By granting this motion, the court is not approving any agreements with the debtor about the payment of the exemption claim.

3. 15-20014-A-7 SAQIB ABBAS — STATUS CONFERENCE
15-2124 — 6-11-15 [1]
PEGASUS INFOTECH INC. V. ABBAS

Tentative Ruling: None.

4. 15-23221-A-7 JOHN NORMINGTON III AND TERESA NORMINGTON — MOTION TO SELL
SSA-3 — 7-1-16 [41]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell the estate's interest in a residential lot in San Felipe, Baja, Mexico to Leo Delgado.

The motion will be denied without prejudice because it does not clearly state what will be the net amount the estate will generate from the sale. The motion identifies specific sums the buyer must pay in conjunction with the sale, but it is not clear on whether such sums are in addition to or inclusive of the $15,000 purchase price.

For example, with respect to the outstanding taxes and fees in the amount of $2,323.37, the motion clearly states that this sum is in addition to the $15,000 purchase amount. Yet, as to the outstanding HOA fees in the amount of $1,863.50, the motion does not clearly state whether this amount is in addition to the $15,000 purchase price. It merely states that "[t]his amount will be deducted from the proceeds of the Committed Seller and paid directly to the HOA." Docket 41 at 3. And there are two "proceeds of the Committed Seller" figures in the motion, the $15,000 purchase price and proceeds of $23,350.30, representing needed cash to close from the buyer. Docket 41 at 2-4.

Exacerbating the confusion, the motion does not say whether each of the additional charges that are responsibility of the buyer will be paid from escrow. The motion also does not state what tax consequences, if any, the estate will incur from the sale here in the United States.

5. 11-33730-A-7 STEADROY IRISH — MOTION TO AVOID JUDICIAL LIEN
SJS-2 — 6-15-16 [38]
VS. CITIBANK (SOUTH DAKOTA), N.A.

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Citibank for the sum of $21,894.71 on August 17, 2010. The abstract of judgment was recorded with Sacramento County on April 19, 2011. That lien attached to the debtor's 50% interest in a residential real property in Elk Grove, 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 $218,370 as of the petition date. Docket 45. The unavoidable liens totaled $200,081 on that same date, consisting of a mortgage in favor of Wells Fargo Home Mortgage in the amount of $179,778 and a mortgage in favor of Golden 1 Credit Union in the amount of $20,303. Dockets 40 & 41. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000. Dockets 40 & 41.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the debtor's 50% interest in 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 his 50% interest in the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 16-20960-A-7 ALF-1 — DWAYNE SCHEER AND MARTII MITCHELL-SCHEER — MOTION TO COMPEL ABANDONMENT 7-11-16 [17]

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 debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Sacramento, California. The entire equity in the property is exempt. The trustee has filed a non-opposition.

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

The value of the property is approximately $402,565. The property is encumbered by a single deed of trust in favor of Wells Fargo Home Mortgage in the approximate amount of $308,733 and the debtors have exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730. Docket 20.

Given the property's value, encumbrances, exemption claim and likely liquidation costs of approximately $32,000 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

7. 16-24261-A-7 DNL-2 — C.C. MYERS, INC. — MOTION TO USE CASH COLLATERAL 7-18-16 [26]

Tentative Ruling: The motion will be dismissed without prejudice because it was set for hearing on 14 days notice in violation of Fed. R. Bankr. P. 2002(a)(2), which requires at least 21 days notice of the hearing on use, sale or lease of estate property motions. The motion was served on July 18, 2016, 14 days prior to the August 1 hearing. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(2) requires a minimum of 21 days of notice of the hearing and because only 14 days' was

given, notice is insufficient.

8. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
DNL-3 ESTABLISH NOTICE AND
ADMINISTRATIVE PROCEDURES
7-18-16 [31]

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 seeks an order limiting notice under Rule 2002(a)(2), (3), (4) and (6) to:

- the U.S. Trustee,
- the chapter 7 trustee,
- the trustee's counsel,
- the debtor,
- the debtor's counsel,
- the debtor's pre-petition secured creditors,
- persons who have appeared and formally requested notice under Rule 2002,
- the debtor's 20 largest unsecured creditors,
- the IRS,
- the U.S. Attorney,

- the California Attorney General,
- state agencies,
- other government agencies to the extent required by Fed. R. Bankr. P. or Local Bankruptcy Rule, and
- any other party wishing to be included in this limited service list, after making such a request.

"The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules."

Fed. R. Bankr. P. 2002(m).

As currently there are over 800 parties entitled to notice under Fed. R. Bankr. P. 2002(a) and it costs approximately $500 every time all parties are served, the court will limit notice to the parties requested. This should substantially alleviate the estate's financial burden of noticing motions under Rule 2002(a). The motion will be granted.

9. 15-23876-A-7 RUBEN REYNOSO
PA-9

MOTION TO APPROVE COMPROMISE AND TO DISMISS ADVERSARY PROCEEDING
6-29-16 [85]

Tentative Ruling: The motion will be denied.

The trustee requests approval of a settlement agreement between the estate and the debtor, resolving a pending discharge objection adversary proceeding against the debtor and resolving the estate's interest in several personal property items.

Under the terms of the compromise, the estate's section 727 action against the debtor will be dismissed. In exchange, the debtor:

- will make a $2,000 payment to the trustee,

- will turn over to the estate a 2005 F250 Ford vehicle and three Yamaha snowmobiles, free and clear of the debtor's exemption claims ($7,232 and $2,600, respectively), for the estate to liquidate them,

- will release his exemption interest in proceeds held by the trustee from the sale of a Skidoo snowmobile (exempted for $1,400), farming equipment (exempted for $8,779.82) and originally undisclosed assets (not claimed as exempt), including a Triton Elite snowmobile, a pipe triplane, and a harvester.

The motion will be denied as the compromise involves the settlement of section 727 claims. The court cannot approve a compromise that encompasses the dismissal of such claims, as part of the consideration exchanged in the settlement. To do so would be tantamount to selling a discharge. The objection to discharge action must be disposed of independently from the settlement.

10. 14-27980-A-7 GKUBI SMART
HSM-13

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
7-11-16 [182]

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

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists only of $13,400, reduced from $23,495 in fees and $570.25 in expenses. This motion covers the period from October 20, 2014 through August 1, 2016. The court

approved the movant's employment as the trustee's attorney on November 17, 2014. In performing its services, the movant charged hourly rates of $300, $310, $390, $400.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) investigating estate assets, including the debtor's residence, a vehicle and the debtor's tax refund, (2) analyzing and advising the trustee about abandonment and exemption issues pertaining to the residence, (3) extensively negotiating settlement with the debtor's counsel on these issues, (4) assessing valuation issues relating to the residence, (5) preparing response to and attending hearing on the debtor's abandonment motion, (6) preparing and prosecuting motion for turnover of residence, (7) advising the trustee about community property issues, (8) preparing and prosecuting a motion to sell the residence, (9) preparing and prosecuting multiple motions to extend the deadlines for objections to exemptions and discharge, (10) preparing and prosecuting an objection to exemption, (11) reviewing and responding to the debtor's dismissal motion, and (12) 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.

11. 16-21683-A-7 GERALDYNE METZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
JPMORGAN CHASE BANK, N.A. VS.
6-24-16 [14]

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

The movant, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Springfield, Illinois.

Given the entry of the debtor's discharge on July 15, 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 $145,000 and it is encumbered by claims totaling approximately $123,984. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is the only encumbrance against the property. This leaves approximately $21,016 of equity in the property.

Given this equity, relief from stay as to the estate under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of

adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of approximately $21,016. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee determines whether the subject property should be administered. The trustee issued an asset report only on June 1, 2016. Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

12. 15-26985-A-7 SCOTT HOMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
U.S. BANK, N.A. VS. — 11-20-15 [26]

Tentative Ruling: The motion will be denied without prejudice in part and dismissed as moot in part.

The movant, U.S. Bank, seeks relief from stay as to a real property in El Dorado Hills, California.

Given the entry of the debtor's discharge on February 9, 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. According to the movant, there is approximately $87,000 of equity in the property. It has a value of $760,000 and it is encumbered by claims totaling $672,918. The movant's claim is the only encumbrance against the property.

Given this equity, relief from stay as to the estate under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

More, the trustee has filed a response, indicating that his investigation has revealed that the property has a value of much more than $760,000. The trustee seeks to continue marketing the property and attempt to sell for the benefit of the estate and the unsecured creditors.

Given the equity in the property, the trustee's investigation about the value of the property and the March 2016 written $870,000 offer for purchase of the property, the court will permit the trustee to continue marketing the property. The motion will be denied without prejudice as to the estate.

13. 16-21585-A-11 AIAD/HODA SAMUEL
FWP-2

MOTION TO
USE CASH COLLATERAL ETC
5-26-16 [98]

Tentative Ruling: The motion will be dismissed as moot.

The court continued the hearing on this motion from June 20, 2016, to address cash collateral use by the estate beyond the July 31, 2016 date, when the last cash collateral use period ended.

However, the trustee has now filed a new motion seeking cash collateral use authority, from August 1 through October 31, 2016. See Docket 170. Given this new motion, the instant motion will be dismissed as moot.

14. 16-21585-A-11 AIAD/HODA SAMUEL
FWP-6

MOTION TO
USE CASH COLLATERAL, REPLACEMENT LIENS, AND ADEQUATE PROTECTION PAYMENTS
7-18-16 [170]

Tentative Ruling: The motion will be conditionally granted.

The chapter 11 trustee seeks approval to use the cash collateral of several creditors secured by three shopping centers and six residential rental properties from August 1 through October 31, 2016.

11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The proposed use of cash collateral will preserve the going concern of the real properties, allowing the trustee to continue operating them as rentals, thus permitting eventual liquidation at a maximum value. This is in the best interest of the estate and the creditors.

The three shopping centers involved in this motion include:

- on Stockton Boulevard in Sacramento, California (no voluntary liens, encumbered solely by the United States' $3,029,412.64 criminal restitution judgment lien);

- in West Sacramento, California (valued at $4.3 million and subject to an approximately $2.925 million first priority claim held by Fairview Holdings II, L.L.C. and United States' second priority criminal restitution judgment);

- on Power Inn Road in Sacramento, California (valued at $1.2 million and subject to an approximately $650,000 first priority claim held by JP Morgan Chase Bank and United States' second priority criminal restitution judgment).

The proposed budget here is substantially similar to the budget pursuant to which the court authorized prior use of cash collateral to the estate. Dockets 109, 150, 174. The trustee proposes to make adequate protection payments to the shopping center secured creditors, up to $5,000 a month and to the extent proceeds are available, and to grant them replacement liens.

The trustee anticipates that the secured creditors will stipulate to the proposed cash collateral use.

Given that the secured creditors will be stipulating to the cash collateral use and given that the proposed budget is substantially similar to the budget of the estate's immediately prior cash collateral request, the motion will be granted as to the three shopping centers. Dockets 150 & 174.

As to the residential properties, they are all in Sacramento, California and include:

- 130 Prairie Circle (rented at $825 a month),
- 180 Prairie Circle,
- 186 Prairie Circle,
- 209 Prairie Circle (rented at $825 a month),
- 5924 Pony Trial Way (rented at $825 a month), and
- 148 Estes Way (rented at $1,000 a month).

Thus far, the trustee has discovered that JP Morgan Chase Bank, Bank of America and The Bank of New York Mellon are each secured by one or more of the residential properties. The trustee still appears to be investigating who are the other creditors, if any, secured by the residential properties. The trustee requests authority to use as necessary up to $2,000 a month per residential property in cash collateral, to maintain the residential properties.

Subject to hearing from any creditors secured by the residential properties, the court will authorize the requested use of cash collateral from those properties.

By authorizing cash collateral use, the court is not approving the compensation of professionals of the estate, even if such compensation is accounted for in the cash collateral budget.

15. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO CONFIRM AMENDED PLAN 6-11-16 [278]
JHH-12

Tentative Ruling: The motion will be granted.

The debtor asks the court to confirm its second amended chapter 11 plan filed on June 11, 2016. Docket 278.

Subject to reviewing the tabulation of ballots at the hearing, the court is prepared to confirm the plan.

16. 15-22990-A-7 XTREME ELECTRIC, INC — MOTION FOR RELIEF FROM AUTOMATIC STAY 6-29-16 [48]
MHK-1
SEQUE CONSTRUCTION, INC. VS.

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

The movant, Segue Construction, Inc., seeks both prospective and retroactive relief from stay with respect to its state court action naming the debtor and the debtor's bond issuer, American Contractors Indemnity Company, pertaining to a nursing home construction project on which Segue was the general contractor and the debtor was an electrical subcontractor. In Schedule B, the debtor has

identified a receivable claim against Segue with a value of $720,459, in connection with which the debtor also filed a mechanic's lien against the project property on or about February 19, 2015. Docket 10.

The trustee opposes the motion, contending that the estate has filed an adversary proceeding, asserting breach of contract and quantum meriut claims against Segue and objecting to Segue's $736,312 unsecured proof of claim against the estate. The adversary proceeding also seeks recovery on construction bonds against two bond issuers, ACIC and The Ohio Casualty Insurance Company.

Segue filed the state court complaint on March 16, 2015, seeking damages for breach of contract by the debtor on the project and seeking recovery against the debtor's bond on the project with ACIC.

The debtor filed this chapter 7 case on April 13, 2015.

After initially taking ACIC's default in the state court action, the default was vacated by a stipulation between Segue and ACIC. ACIC then filed an answer to the complaint in September 2015.

The complaint, although served on ACIC, was never served on the debtor or the estate, and neither the debtor, nor the estate has appeared in the state court action.

Pursuant to a stipulation with ACIC, Segue filed a first amended complaint in the state court action on March 21, 2016, still naming only the debtor and ACIC as defendants and asserting the two claims in the original complaint, but adding a third claim for declaratory relief as to the mechanic's lien against the debtor. That complaint has not been served on the debtor either.

Segue now seeks: retroactive stay relief as to all post-petition actions in the state court litigation, including the filing of the amended complaint, and to prospectively continue with the prosecution of its state court claims, including the breach of contract and mechanic's lien claims.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

The court will not grant retroactive relief from stay as to all actions taken by the movant Segue in the state court action post-petition because the only identified action taken against the debtor post-petition is the filing of the amended complaint, adding the mechanic's lien claim against the debtor.

The motion will be denied as to the retroactive stay relief request, including

the filing of the amended complaint, because the court sees no evidence in the record of when Segue first learned of the bankruptcy case.

More, ignorance of the law is not excuse for violation of the law. Segue's motion strongly suggests that Segue has known of the debtor's bankruptcy case for a long time. Despite this, Segue did nothing to obtain relief from stay until it filed this motion because Segue's counsel only "now realize[d] that the filing of the Amended Complaint should have been delayed until this court could rule on a motion for relief from the automatic stay." Docket 50 at 3.

The court will grant prospective relief from stay under section 362(d)(1) for the continued prosecution of the state court action against the debtor, including litigation of the breach of contract and mechanic's lien claims against the debtor. But, Segue will be permitted only to liquidate its claim against the debtor's bankruptcy estate. If and when Segue obtains a judgment against the debtor, Segue may only file a proof of claim in this case. It may not enforce or collect on any such judgment.

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.

The court rejects the trustee's contention that his recently filed adversary proceeding complaint should be allowed to proceed instead of the state court action. Abstention is cause for the granting of prospective relief from stay.

Abstention under 11 U.S.C. § 1334(c)(1) is warranted as to the estate's adversary proceeding claims. The statute provides that "Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." This is known as discretionary abstention.

In the Ninth Circuit, the factors that a court must consider when deciding whether to abstain include:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,

(2) the extent to which state law issues predominate over bankruptcy issues,

(3) the difficulty or unsettled nature of the applicable law,

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,

(7) the substance rather than form of an asserted "core" proceeding,

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the

bankruptcy court,

(9) the burden of [the bankruptcy court's] docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to a jury trial, and

(12) the presence in the proceeding of nondebtor parties.

Christensen v. Tuscon Estates, Inc. (In re Tuscon Estate, Inc.), 912 F.2d 1162, 1166-67 (9th Cir. 1990) (citing Republic Reader's Serv., Inc. v. Magazine Serv. Bureau, Inc. (In re Republic Reader's Serv., Inc.), 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)) (cause for lifting the stay may exist where a state court proceeding involves the same issues pending before the bankruptcy court); see also Chey v. Cohen (In re Chey), Case Nos. CC-09-1253-PaMoB, CC-09-1254-PaMoB, SA 09-13917 RK, SA 09-13910 RK, 2010 WL 6466579, at *6-8 (B.A.P. 9th Cir., Apr. 12, 2010)..

Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding").

Discretionary abstention is appropriate here because there is a pending state court action naming the debtor and its bond issuer, ACIC, as defendants. The state court action involves the same issues the estate is seeking to litigate in the adversary proceeding, namely, breach of contract and mechanic's lien issues pertaining to the nursing home construction project where Segue was a general contractor and the debtor was a subcontractor.

The abstention will not affect the administration of this bankruptcy estate. Nothing prevents the estate from litigating its breach of contract and mechanic's lien claims in the existing state court action.

On the other hand, construction claims are notorious for extensive litigation and trial duration. Trials in the bankruptcy court exceeding three days in duration would be a burden on this court's docket. Given the multitude of claims and parties involved, trial is likely to take much more than three days here.

Moreover, all issues pertaining to the claims – both in the state court action and adversary proceeding – are based purely on state construction law, which this court does not typically adjudicate.

Segue's state court action includes breach of contract, mechanic's lien, and recovery on bond claims. The trustee's adversary proceeding includes breach of contract and quantum meriut claims against Segue, and seeks to recover from ACIC and The Ohio Casualty Insurance Company on bonds obtained by the general contractor and owner of the project property, respectively.

The estate's claim objection cause of action is core merely in form. The underlying claim to the objection is breach of contract, a state law claim.

Further, the state court action includes a claim by Segue against ACIC, the debtor's bond issuer on the project, seeking to recover on the debtor's bond.

This court does not have subject matter jurisdiction over this claim. Neither the claim, nor the bond proceeds Segue is seeking to recover from ACIC is property of the estate.

It would not be feasible to segregate Segue's claim against ACIC into state court, while the remaining claims are litigated in the bankruptcy court.

Furthermore, this court does not have constitutional authority to finally resolve some of the trustee's claims in the recently filed adversary proceeding. For instance, the court has no constitutional authority to finally resolve the trustee's claim to recover from Ohio Insurance on the bond of the owner of the project property. This claim is non-core and is only "related to a case under title 11." See 28 U.S.C. § 157(c)(1); DHP Holdings II Corp. v. The Home Depot, Inc. (In re DHP Holdings Corp), 435 B.R. 264, 270-72 (Bankr. D. Del. 2010) (recognizing that disputed turnover claims and breach of contract claims are non-core).

The claim is not under title 11 and does not invoke a substantive right provided by title 11, as it involves purely state law rights and liabilities. By its nature, the claim could not arise *only* in the context of a bankruptcy case. The claim can be easily litigated in state court, where an action by Segue has been pending since March 2015.

The claim is only related to the underlying bankruptcy case because the trustee is seeking to recover money from Ohio Insurance pursuant to state law. It will involve purely state law issues.

This means that the bankruptcy court may not enter final orders or judgments with respect to the claim. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. 28 U.S.C. § 157(c)(1). It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(2).

This is consistent with the Supreme Court's ruling in N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 88 (1982), which held that it was unconstitutional for the bankruptcy court to enter a final judgment adjudicating state law contract claims against a party who was not otherwise a part of the bankruptcy proceeding.

The adversary proceeding claim against Ohio Insurance is a state law breach of contract claim or very similar to such a claim because the estate is seeking to recover essentially on a bond contract between the owner of the project property and Ohio Insurance. And, Ohio Insurance is not part of this bankruptcy proceeding. It has not filed a proof of claim in the case.

It would not be feasible for the totality of the litigation and all parties involved not to finally decide the estate's claim against Ohio Insurance, while entering a final judgment on the other claims in the adversary proceeding.

Given the foregoing, abstention under 11 U.S.C. § 1334(c)(1) is warranted and it is cause for the granting of prospective relief from stay for Segue to continue prosecuting the state court action.

17. 15-22990-A-7 XTREME ELECTRIC, INC. MOTION FOR CONTEMPT
PLC-4 7-18-16 [58]

Tentative Ruling: The motion will be denied.

The debtor seeks contempt of court damages for Segue Construction, Inc.'s violation of the automatic stay as to the bankruptcy estate, in Segue's prosecution of claims post-petition against the debtor's bond-issuer, American Contractors Indemnity Company, on a construction project where the debtor was an electrical subcontractor and Segue was the general contractor. The motion is premised on the debtor's indemnification-based liability to ACIC for actions taken to recover on the bond issued to the debtor.

Segue filed the state court complaint on March 16, 2015, seeking damages for breach of contract by the debtor on the project and seeking recovery against the debtor's bond on the project with ACIC.

The debtor filed this chapter 7 case on April 13, 2015.

After initially taking ACIC's default in the state court action, the default was vacated by a stipulation between Segue and ACIC. ACIC then filed an answer to the complaint in September 2015.

The complaint, although served on ACIC, was never served on the debtor or the estate, and neither the debtor, nor the estate has appeared in the state court action.

Pursuant to a stipulation with ACIC, Segue filed a first amended complaint in the state court action on March 21, 2016, still naming only the debtor and ACIC as defendants and asserting the two claims in the original complaint, but adding a third claim for declaratory relief as to the mechanic's lien against the debtor.

The motion will be denied because the debtor has no standing to recover damages for harm sustained by the estate. The debtor is not the estate or representative of the estate. Further, since this is a chapter 7 case for a corporate debtor, it will not receive a discharge and will continue in its existence after the conclusion of the case.

A plaintiff must meet both the constitutional and prudential requirements of standing. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

This is a liquidation proceeding and the debtor is a corporation, which is no longer operating and it will not be receiving a bankruptcy discharge. The debtor seeks damages resulting from violation of the stay as to the estate, not as to the debtor. The $2,328.50 in damages sought by the debtor are based on the debtor's pre-petition indemnification agreement with ACIC, on which the

debtor is no longer liable. The bankruptcy estate is now liable on any damages sought pursuant to that agreement.

When the debtor filed this case on April 13, 2015, the bankruptcy estate became responsible for the debtor's pre-petition debts, including any debts arising from pre-petition agreements, such as the indemnification agreement between the debtor and ACIC. As such, only the estate has standing to recover damages for violation of the estate's stay. The debtor does not have such standing. The debtor has not satisfied the injury in fact element of constitutional standing.

The debtor's request that Segue dismiss both the debtor and ACIC in the state court action will be denied as well. That action was pending already when the debtor filed the instant bankruptcy case.

18. 16-21642-A-7 YELENA VAKULCHIK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 7-1-16 [19]
U.S. BANK, N.A. VS.

Tentative Ruling: 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 Sacramento, California under 11 U.S.C. § 362(d)(1) and 362(d)(4). The debtor is not obligated on the loan secured by the property. The borrower on that loan merely deeded to the debtor partial interest in the property, approximately seven months pre-petition.

Given the entry of the debtor's discharge on July 19, 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, the section 362(d)(1) part of the motion will be dismissed as moot as to the debtor.

As to the estate, the analysis is different. The trustee filed a report of no distribution on April 27, 2016. This is cause for the granting of relief from stay under section 362(d)(1) as to the estate.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) 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.

As the debtor did not execute the movant's underlying mortgage agreements (note and deed of trust), the movant has no contractual privity with the debtor and 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.

Another reason for denying fees and costs is that the movant has not established that the value of its collateral exceeds the amount of its secured claim. 11 U.S.C. § 506(b). The court has no evidence from the movant about

the value of the property.

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

Finally, the court will grant relief under section 362(d)(4), which prescribes that:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

Cheryl Lee is the borrower on the loan secured by this property. In February 2015, she transferred a tenants in common interest in the property to Scott Booth, without consent from the movant. Docket 22, Ex. 4. Mr. Booth filed a chapter 7 bankruptcy case in this district on September 9, 2015 but did not schedule an interest in the subject property. Case No. 15-27098, Docket 1, Schedule A.

In August 2015, Ms. Lee once again transferred interest—"community property" interest—in the property without consent of the movant, to the debtor, who in turn filed this bankruptcy case on March 17, 2016. Docket 22, Ex. 4. The debtor did not schedule interest in the subject property either. Docket 1, Schedule A.

From the multiple transfers of interest in the property by the borrower on the loan secured by the property and from the subsequent bankruptcy filing of each of the transferees and their failure to schedule interest in the property, the court infers that the filing of the instant petition was part of a scheme to delay, hinder, or defraud creditors. Accordingly, the court will grant relief under section 362(d)(4).

The court makes no determination about the debtor's participation in the scheme to delay, hinder, or defraud creditors.

FINAL RULINGS BEGIN HERE

19. 14-30201-A-7 SHARON GILLAM — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-4 — 7-1-16 [52]

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 $5,968.26 in fees (reduced from $7,212.50) and $31.74 in expenses, for a total of $6,000. This motion covers the period from January 2, 2015 through June 30, 2016. The court approved the movant's employment as the trustee's attorney on January 6, 2015. In performing its services, the movant charged hourly rates of $175, $200, $325, $400, $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the review of assets, including those of a plumbing and home maintenance business; (2) negotiating the sale of the business and its assets to a former long-term employee, (3) preparing the sale agreement, (4) reviewing the proof of claim of the former employee, (5) assessing the former employee's unauthorized use of business assets, and (6) 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.

20. 16-23301-A-7 TROY/PATRICIA THOMPSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 6-29-16 [17]
REGIONS BANK 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, Regions Bank, seeks relief from the automatic stay as to a real property in Bossier City, Louisiana.

There is no evidence that the property is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The trustee filed a report of no distribution on June 21, 2016 and he has filed a non-opposition to the motion. And, in the statement of intention, the debtor has indicated an intent to surrender the property. Docket 9. The foregoing is cause for the granting of relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The property has a value of $168,000 and it is encumbered by claims totaling approximately $159,091. The movant's deed is the only encumbrance against the property.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

21. 16-23939-A-7 MARIDEL WEAVER
PEE-1
GALT EILLEND, LTD VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-1-16 [14]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on July 5, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). And the movant is not seeking 11 U.S.C. § 362(d)(4) or retroactive relief from stay.

22. 16-22753-A-7 KATHERINE HOOKANO
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-30-16 [37]

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2006 BMW 530 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 April 29, 2016 and a meeting of creditors was first convened on June 2, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 29. The debtor did not file a statement of intention by the 30-day deadline.

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 did not file a statement of intention within the prescribed 30-day deadline. 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 May 30, 2016, 30 days

after the petition date.

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 2, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on May 30, 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.

23. 14-22888-A-7 LBG-6 VS. SMW 104 FEDERAL CREDIT UNION — ROSS PEARSON AND MICHELLE WRIGHT — MOTION TO AVOID JUDICIAL LIEN 7-18-16 [59]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, SMW 104 Federal Credit Union, 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.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail and was not addressed to an officer of the respondent. Docket 63. It was not addressed to anyone. Docket 63.

And, while the debtor served SMW'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).

24. 16-20888-A-7 MDE-1 WELLS FARGO BANK, N.A. VS. — RALPH/JEAN LOPEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY 6-24-16 [20]

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, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Aromas, California.

Given the entry of the debtor's discharge on June 6, 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 $410,000 and it is encumbered by claims totaling approximately $469,920. The movant's deed is in first priority position and secures a claim of approximately $411,536.

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 May 26, 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.

25. 14-27889-A-7 WEBION INC. MOTION TO EMPLOY
SKS-2 6-30-16 [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 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 Gonzales & Sisto as accountant for the estate. G&S will provide tax accounting services and prepare estate tax returns pertaining to the 2014 and 2015 tax years. The proposed compensation is a flat fee of $4,800. 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. G&S 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.

26. 16-23690-A-7 MARK/VICTORIA BOTELLO — MOTION TO PERMIT TURNOVER OF LEVIED FUNDS 7-18-16 [13]
FF-1

Final Ruling: The motion will be dismissed without prejudice because the court has no evidence that the motion was served on anyone. The two proofs of service in support of the motion refer to an attached service list but neither of them include such a list. Dockets 17 & 18.

27. 16-23992-A-7 JULIO GUTIERREZ — ORDER TO SHOW CAUSE 7-5-16 [11]

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

July 12, 2016. No prejudice has resulted from the delay.

28. 16-23694-A-7 CASEY/MELISSA OSBUN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MET-1 — 6-28-16 [9]
BANK OF THE WEST 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, Bank of the West, seeks relief from the automatic stay with respect to a 2007 Supreme skiboat, including a trailer and motor. In the schedules, the vehicle has been identified as a 2005 model. The vehicle has a value of $30,000 and its secured claim is approximately $38,480.

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.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and it is depreciating in value.