

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**September 12, 2016 at 10:00 a.m.**

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

1, 5

When Judge McManus convenes court, he will ask whether anyone wishes to oppose 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**

September 12, 2016 at 10:00 a.m.

**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 OCTOBER 3, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 26, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

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

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

**MATTERS FOR ARGUMENT**

1. 12-22720-A-7 MICHAEL SHOWALTER MOTION TO  
DNL-7 EMPLOY ACCOUNTANT  
8-22-16 [105]

**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 requests authority to employ Gonzales & Sisto as accountant for the estate. G&S will prepare estate tax returns and provide general tax-related accounting services. The proposed compensation is a flat fee of \$1,900. 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.

2. 12-22720-A-7 MICHAEL SHOWALTER MOTION TO  
DNL-8 SELL AND TO APPROVE BROKER'S  
COMPENSATION  
8-22-16 [99]

**Tentative Ruling:** The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for \$104,500 real property in Lecanto, Florida to Richard Omelian. The estate owns a one-third interest in the property. The other two-thirds interest in the property is equally shared by the debtor's two siblings. The property is unencumbered and there are no allowed exemptions against it. 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 (one-third of 6%).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. The trustee anticipates the estate to net approximately \$30,000 from the sale.

Hence, subject to the consent of the co-owners, 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.

3. 16-20120-A-7 RAQUEL RIOS AMENDED MOTION FOR  
ETW-1 RELIEF FROM AUTOMATIC STAY  
BROWNPENNY, L.L.C. VS. 8-23-16 [81]

**Tentative Ruling:** The motion will be denied without prejudice.

The court continued the hearing on this motion from August 22, 2016 because the debtor converted the case from chapter 13 to chapter 7 on August 10.

The movant, Brownpenny, L.L.C., seeks relief from the automatic stay as to real property in Fairfield, California. The property has a value of \$240,000 and it is encumbered by claims totaling approximately \$225,517. The movant's deed is the only encumbrance against the property. This leaves approximately \$14,482 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate. Costs of sale are not encumbrances for purposes of the equity analysis of section 362(d)(2).

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 \$14,482. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after November 14, 2016. The court also notes that the trustee will be conducting a meeting of creditors only two days after the hearing on this motion, on September 14, 2016. Thus, relief from stay under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied.

4. 15-28031-A-7 SATORI TODD

ORDER TO  
SHOW CAUSE  
8-25-16 [55]

**Tentative Ruling:** The case will be dismissed.

The debtor filed Amended Schedules E/F on August 11, 2016, but did not pay the \$30 filing fee. The payment of the fee is mandatory and failure to pay the fee is cause for dismissal of the case. See 11 U.S.C. § 707(a)(2).

5. 15-29033-A-7 FRANCISCO PENA  
JFL-2  
HSBC BANK USA, N.A. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
8-27-16 [94]

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

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

The movant, HSBC Bank U.S.A., seeks relief from the automatic stay as to real property in Fairfield, California.

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

As to the estate, the analysis is different. The property has a value of \$187,000 and it is encumbered by claims totaling approximately \$412,411. The movant's deed is in first priority position and secures a claim of approximately \$381,300.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

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

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

extent it is otherwise applicable.

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

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

6. 16-25039-A-7 CLYDE LO CHIN MOTION FOR  
DVW-1 RELIEF FROM AUTOMATIC STAY, ETC.  
21ST MORTGAGE CORPORATION VS. 8-25-16 [11]

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

The movant, 21st Mortgage Corporation, seeks relief as to real property in Tampa, Florida. The movant seeks declaratory relief that it did not violate the stay when it conducted a post-petition lockout with respect to the property against the debtor. In the alternative, the movant seeks retroactive stay relief ratifying the post-petition lockout of the property.

The movant filed a judicial foreclosure complaint as to the property on June 23, 2015. The debtor's default in the action was entered on August 20, 2015. The movant purchased the property at a pre-petition foreclosure sale on April 19, 2016. A certificate of title was filed with the Florida State court on May 2, 2016. The debtor, who apparently lives in Vallejo, California, filed this case on July 31, 2016. The movant conducted a lockout at the property post-petition, on August 12, 2016.

The movant argues that there was no violation of the stay because the debtor did not have an interest in the property at the time of the lockout. This request will be denied because the court does not determine the extent, validity or priority of an interest in property in the context of a motion. Such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

The court will deny the request for retroactive stay relief as well.

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 Env'tl. Water Corp. v. City of Riverside (In re Nat'l Env'tl. Water Corp.), 129 F.3d 1052, 1055 (9<sup>th</sup> 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 deny retroactive stay relief because the record does not indicate that the movant did not know of the bankruptcy filing when it locked

the debtor out of the property. The motion also does not state when the movant first learned of the bankruptcy.

Nevertheless, the court will grant prospective relief from stay.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to continue to exercise its state law rights – whatever they may be – with respect to the property. No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property, to the extent permitted under applicable state law.

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

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

7. 14-30260-A-7 KENNETH PAIGE MOTION TO  
SLC-2 SELL AND TO APPROVE REALTOR'S  
COMPENSATION  
8-12-16 [50]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for \$451,000 the estate's interest in real property in Sacramento, California to Victor Ortega and Jennifer Nghiem. The property has a scheduled value of \$337,640. 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 Coldwell Banker.

The property is subject to a judicial lien in the amount of \$61,045, a Sacramento County lien in the amount of \$3,585 and the debtor's exemption claim in the amount of \$175,000.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. The trustee anticipates the estate to generate approximately \$150,000 from the 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.

8. 16-22163-A-7 SYLVIA KINERSON MOTION TO  
MDM-1 SELL  
8-9-16 [33]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for \$9,000 the estate's unencumbered one-half interest in a 1950 Mercury vehicle and to sell for \$500 the estate's unencumbered interest in a 1983 two-wheel utility trailer, to Mick Kinerson, who owns the other one-half interest in the vehicles. The trustee contends that the Mercury vehicle – the remote control for which is missing – has a value of approximately \$25,000. The trustee also asks for waiver of the

14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Given that the sale does not involve other sale costs, such as an auctioneer commission, 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).

The debtor's declaration in response to the motion only explains that she does not have the remote control. She does not oppose the sale, however.

9. 11-48272-A-7 ANNE MARQUEZ MOTION TO  
HSM-6 SELL ETC  
8-16-16 [89]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for \$335,000 the estate's interest in real property in Winters, California to Equity Trust Company FBO Derik Landry. The property has a scheduled value of \$250,000. The trustee also asks for approval of the payment of the real estate commission.

The property is subject to a single mortgage held by JPMorgan Chase Bank in the amount of no more than approximately \$175,000. The property is subject also to some outstanding property taxes. The debtor has claimed an exemption of \$19,929.55 in the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

**FINAL RULINGS BEGIN HERE**

10. 16-24518-A-7 ROGER GREENING MOTION FOR  
AP-1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A. VS. 8-5-16 [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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 America, seeks relief from the automatic stay as to real property in Fair Oaks, California. The property has a value of \$260,000 and it is encumbered by claims totaling approximately \$267,587. 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 August 15, 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.

11. 12-28955-A-7 LAWRENCE HERTZOG MOTION FOR  
JCW-1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK TRUST, N.A. VS. 8-8-16 [141]

**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 (9<sup>th</sup> Cir. 1995). Further, because the court will be dismissing the motion as moot, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> 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 but the absence of the automatic stay will be confirmed.

The movant, U.S. Bank Trust, seeks relief from the automatic stay as to real property in West Sacramento, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30<sup>th</sup> day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On January 25, 2012, the debtor filed a chapter 13 case (case no. 12-21438). But, the court dismissed that case on April 25, 2012 due to the debtor's failure to make plan payments, provide documents to the trustee and fulfill duties under section 521. The debtor filed the instant case on May 8, 2012, as a chapter 13 case, and on June 14, 2016 the case was converted to chapter 7.

The prior case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on June 7, 2012, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9<sup>th</sup> Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30<sup>th</sup> day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on June 7, 2012, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

12.	12-38363-A-7	WILLIAM ST CLAIR	MOTION FOR
	ETL-1		RELIEF FROM AUTOMATIC STAY
	WELLS FARGO BANK, N.A. VS.		8-2-16 [316]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 real property in Chico, California.

Given the entry of the debtor's discharge on November 20, 2013, 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 \$208,243 and it is encumbered by claims totaling approximately \$220,099. The movant's deed is in the only mortgage against the property, securing a claim for \$219,174.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

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

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

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

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

13. 11-21174-A-7 RALPH/TAMARA BAILEY MOTION TO  
EAT-2 AVOID JUDICIAL LIEN  
VS. CHASE BANK, N.A. 8-12-16 [24]

**Final Ruling:** The motion will be dismissed without prejudice because it was not served on the respondent, JPMorgan Chase Bank. See Fed. R. Bankr. P. 7004(h). Docket 28. Also, while the debtor served JPMorgan Chase Bank's

attorney, Zwicker & Associates, 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).

14. 15-22990-A-7 XTREME ELECTRIC, INC MOTION TO  
JRR-4 APPROVE COMPENSATION OF ACCOUNTANT  
8-10-16 [74]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of \$1,984 in fees and \$6.80 in expenses, for a total of \$1,990.80. This motion covers the period from March 8, 2016 through the present. The court approved the movant's employment as the estate's accountant on August 11, 2015. In performing its services, the movant charged hourly rates of \$200 and \$330.

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 assisting the trustee with tax reporting issues and with the preparation of tax returns.

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