UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 11, 2016 at 10:00 a.m.

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

1, 3, 5, 7, 8, 10, 11, 12

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 OCTOBER 31, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 24, 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. 16-22503-A-7 EMBRY FANTOZZI — MOTION TO EMPLOY
DNL-1 — 9-27-16 [19]

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 approval to employ Desmond, Nolan, Livaich & Cunningham (DNLC) as counsel for the estate. DNLC will assist the estate with investigation, prosecution, and collection of all transfer avoidance claims, will assist with sale of the estate's interest in real property, and will provide other services pertaining to the general administration of the estate. The proposed compensation is a contingent fee of 25% of any recovery obtained as a result of DNLC's efforts prior to commencing suit, 33% of any recovery obtained 30 days before trial, and 40% of any recovery obtained thereafter. The movant also requests approval of payment of the compensation, without further order of the court.

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. DNLC 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. 14-31211-A-7 ALICE CARLSON — MOTION TO AVOID JUDICIAL LIEN
MOH-1 — 8-26-16 [21]
VS. CITIBANK (SOUTH DAKOTA), N.A.

Tentative Ruling: The motion will be dismissed without prejudice.

First, service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3),

which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the motion on the corporate entities without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 25 and 26.

The certificate of service indicates that the presence of an "*" next to the name of the respondent means that the phrase, "to the attention of an officer, a managing agent or general agent, or to any other agent authorized by appointment of by law to receive process," appeared on the left side of the envelope. However, this is not addressing the envelope to Citibank. The address appears in one location and the "to attention. . . ." language appears in another.

Second, according to the FDIC, Citibank (South Dakota), N.A., is an insured depository. See research.fdic.gov/bankfind/results.html?name=CITIBANK+%28SOUTH+DAKOTA%29%2C+N.A.&fdic=&address=&city=&state=&zip=

Therefore, Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution, is applicable. While the second certificate of service (Dkt. 26) indicates the motion was sent by certified mail, the certificates of service do not indicate the notice was addressed solely to an officer of the creditor. It was addressed (assuming that what was done here amounts addressing the envelope) to "officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process." Docket 27. This does not satisfy Rule 7004(h). Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

Third, assuming that Hunt & Henriques were the state court attorneys of the respondent, service on the attorneys is not sufficient to serve the corporations unless the attorney agreed to accept service. There is no evidence of an agreement, such service is insufficient. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

3. 16-26019-A-7 BETHANY BLACK — MOTION FOR
KHS-5 — RELIEF FROM AUTOMATIC STAY
IH6 PROPERTY WEST L.P. VS. — 9-23-16 [21]

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.

The movant, IH6 Property West L.P., seeks relief from the automatic stay as to real property in Antelope, California.

The movant is the owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease in July 2016. The movant served the debtor with a three-day notice to pay or quit on July 8, 2016. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on July 28, 2016, and a judgement for possession of the property was granted in the movant's favor on August 26, 2016. The debtor filed this bankruptcy case on September 9, 2016.

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

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

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

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

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

4. 16-25624-A-7 JAMES BROOMFIELD — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-25-16 [4]

Tentative Ruling: The debtor shall appear and show cause why his motion to waive the filing fee should be granted.

The debtor's motion indicates that he is a household of one. His monthly income is $1,782 which is above 150% of the official poverty line for a household of one. However, in the motion the debtor indicates that $1,477 of his total income is noncash government assistance. This is too high to be food stamps and the court is unaware of any other noncash assistance that could possibly be as high as $1,477 at least for a household of one. Form 122A

indicates that the debtor receives $1,477 a month in social security. This is not noncash assistance.

Therefore, absent other information from the debtor, the court concludes that the debtor has total household monthly income of $1,782, more than $1,485, which is 150% of the official poverty line for a household of one. Accordingly, the motion will be denied and the filing fee shall be paid. The debtor may request that the filing fee be paid in installments.

5. 16-23238-A-7 SIL/YUN KIM — MOTION TO COMPEL ABANDONMENT
JHL-3 — 9-22-16 [34]

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 debtor seeks an order compelling the trustee to abandon the estate's interest in business personal property which is described in detail in the motion. The entire equity in such property is exempt.

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

The property has a scheduled value of $8,000. The debtor has claimed an $8,000 exemption in the property. Given the property's value and the exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

6. 10-53041-A-7 MOMOTAKA/DEBORAH SAIYO — MOTION TO APPOINT TRUSTEE
DRE-2 — 9-2-16 [38]

Tentative Ruling: The motion will be dismissed because it is premature. According to the motion, the debtors intend to amend the schedules to disclose a previously unscheduled asset. Once it is scheduled, then the court will entertain this motion.

7. 16-26170-A-7 CASEY REEVES — MOTION FOR RELIEF FROM AUTOMATIC STAY
MBW-1 — 9-26-16 [10]
CENTRAL STATE CREDIT UNION VS.

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.

The movant, Central State Credit Union, seeks retroactive relief from the automatic stay as to a 2011 Ford Taurus. The debtor entered into a retail installment sales contract to purchase the vehicle in 2011. Thereafter, the contract was assigned to the movant. Subsequent to the execution of the contract, the movant received a security interest in the vehicle and perfected the interest by recording a lien on the certificate of title. The debtor defaulted on the contract in June 2016. The movant repossessed the vehicle on August 11, 2016 and sent the debtor a notice of its intention to sell the vehicle on August 12, 2016. The debtor filed the instant chapter 7 case on September 15, 2016. The movant became aware of the bankruptcy filing on September 19, 2016 via the electronic noticing service. However, the account was not updated with the bankruptcy filing in time to instruct the auction to postpone the sale scheduled for the next morning. The auction proceeded with the sale without knowledge of the bankruptcy filing and sold the vehicle on September 20, 2016.

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).

At the time of the auction, the movant and its agents were unaware of the bankruptcy. And, had the movant applied for relief from the automatic stay before selling the vehicle, the court would have likely granted it, given the pre-petition default by the debtor, the movant's pre-petition repossession of the vehicle, and the debtor's apparent lack of interest in recovering the vehicle (as indicated by the fact that the debtor listed the movant's deficiency claim in Schedule F and made no demand for the return of the vehicle).

Retroactive relief from the automatic stay will be granted only with respect to the movant's sale of the vehicle. The supporting declaration does not describe any other action taken by the movant post-petition against the debtor in violation of the stay.

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.

8. 15-29956-A-7 GMW-1 — CHRISTOPHER/IMELDA ELLENBERGER — MOTION TO COMPEL ABANDONMENT 9-23-16 [21]

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 debtor seeks an order compelling the trustee to abandon the estate's interest in a 2002 Nissan.

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

The property has a value of $1,500, subject to a secured claim of $5,730.74. Given the property's value, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

9. 16-24261-A-7 DNL-8 — C.C. MYERS, INC. — MOTION TO USE CASH COLLATERAL 9-20-16 [212]

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 debtor, the creditors, 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 chapter 7 trustee seeks to use $82,000 in order to pay immediate expenses to preserve assets of the estate and minimize liabilities. The secured creditor, Liberty Mutual Insurance Company, which holds a $26 million claim secured by the cash previously stipulated to a prior use of cash collateral and has not filed opposition to this further use.

The trustee is seeking to use the funds in order to pay rent and utilities for two locations at which the debtor formerly operated and at which assets are located. In addition, the trustee seeks leave to pay $15,800 for electronic

records management. On the latter use, the Construction Laborers Trust Funds, etc., et al., has filed opposition asking that these funds be used to maintain and make available certain records that the trust funds wish to audit.

If the trustee needs money to maintain the debtor's books and records, the court will not prevent the trustee from doing so because one creditor wants the trustee first to produce a particular record. If the trust funds wish to examine particular records, there is a mechanism for doing so in the bankruptcy rules.

10. 16-26092-A-7 ROBERT YATES — MOTION TO COMPEL ABANDONMENT 9-14-16 [7]
EAS-1

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 debtor seeks an order compelling the trustee to abandon the estate's interest in business personal property which is described in detail in the motion. The entire equity in such property is exempt.

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

The property has a scheduled value of $4,735.28. The debtor has claimed a $4,735.28 exemption in the property. Given the property's value and the exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

11. 13-32295-A-7 LORRAINE LOPEZ — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-16-16 [58]
DNL-3

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

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $4,404.75 in fees and $595.25 in expenses, for a total of $5,000. This motion covers the period from August 15, 2014 through September 15, 2016. The court approved the movant's employment as the trustee's attorney on August 29, 2014.

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 advising and representing the trustee in connection with the debtor's attempt to convert the case to one under chapter 13,seeking the turnover of assets from the debtor, and compromising the estate's claims against the debtor.

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.

12. 12-24198-A-7 CARLA MEDRANO — MOTION TO AVOID JUDICIAL LIEN
PLC-5
VS. THE GOLDEN 1 CREDIT UNION — 9-26-16 [60]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of Golden 1 Credit Union for the sum of $23,128 on September 15, 2011. The abstract of judgment was recorded with Sacramento County on December 8, 2011. That lien attached to the debtor's 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 $254,000 as of the petition date. Docket 13. The unavoidable liens totaled $384,902 on that same date, consisting of a single mortgage in favor of Provident Funding. Docket 13. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of $10.00 in Schedule C. Docket 13.

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).

FINAL RULINGS BEGIN HERE

13. 16-22302-A-7 AUTUMN HANDLEY — MOTION FOR AN EXTENSION OF TIME 9-9-16 [16]
MOH-1

Final Ruling: The motion was granted by order on September 13, 2016. Docket 19.

14. 16-24606-A-7 THERESA GODBOLD — MOTION TO COMPEL ABANDONMENT 9-2-16 [15]
ET-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property. The entire equity in the property is exempt.

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

The property has a scheduled value of $326,000, subject to secured claims totaling $173,335. The debtor has also claimed a $175,000 exemption in the property. Given the property's value, encumbrances and exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

15. 16-25542-A-7 JARNAL GILL — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-1-16 [11]
ABG-1
KINECTA FEDERAL CREDIT UNION 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, Kinecta Federal Credit Union, seeks relief from the automatic stay with respect to a 2013 Ford Taurus. The vehicle has a value of $17,719 and its secured claim is approximately $19,749.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The debtor has not made one pre-petition and one post-petition payments to the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

16. 15-21845-A-7 JOSEPH BARNES — MOTION TO RECONVERT CASE 9-22-16 [108]
SS-5

Final Ruling: The motion will be dismissed without prejudice.

This case was filed under chapter 13 then converted to chapter 7 on the motion of the chapter 13 trustee. The debtor has received a chapter 7 discharge but now wishes to reconvert the case to chapter 13.

This hearing was set on 19 days' notice of the hearing. Fed. R. Bankr. P. 2002(a)(4) requires a minimum of 21 days' notice of the hearings on motions to convert a chapter 7 case to one under chapter 13. 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)(4) requires a minimum of 21 days of notice of the hearing and because only 19 days' was given, notice is insufficient.

17. 16-24349-A-7 KEVIN/KIMBERLEY LEWIS — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-9-16 [22]
RCO-1
PACIFIC UNION FINANCIAL, L.L.C. 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, Pacific Union Financial, LLC seeks relief from the automatic stay as to a real property in Marysville, California. The property has a value of $332,952.00 and is encumbered by claims totaling approximately $447,739.04. The movant's deed is in first priority position and secures a claim of approximately $423,929.44.

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 notes that the chapter 13 trustee filed a statement of nonopposition on September 16, 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.

18. 14-29660-A-7 REBECCA MEDRANO-ADKINS — MOTION TO AVOID JUDICIAL LIEN
MET-1
VS. GRANT AND WEBER — 9-12-16 [21]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of Grant and Weber, A Corporation for the sum of $802,069.64 on May 12, 2014. The abstract of

judgment was recorded with Solano County on September 8, 2014. 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 $300,000 as of the petition date. Docket 1. The unavoidable liens totaled $141,660 on that same date, consisting of a single mortgage in favor of Capital One. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $158,340 in Schedule C. Docket 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).

19. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWH-1 — 9-8-16 [187]
INSURANCE COMPANY 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, Insurance Company of the West, seeks relief from the automatic stay to proceed in state court with its personal injury claims against the debtor. Recovery will be limited to available insurance coverage, if any.

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

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

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

20. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-1 — 9-13-16 [198]
R.J. NOBLE COMPANY 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, R.J. Noble Company, seeks relief from the automatic stay to proceed in state court to enforce Stop Notice claims and Payment Bond claims against the debtor due to incomplete payment related to construction work performed by the movant. Recovery will be limited to the sureties under various public works payment bonds and a stop notice release bond and third parties (namely public entities) holding funds based upon stop notice claims filed by the movant, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the sureties under various public works payment bonds and a stop notice release bond and third parties (namely public entities), the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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

21. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-2 — 9-13-16 [204]
EBS GENERAL ENGINEERING, INC. 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, EBS General Engineering, Inc., seeks relief from the automatic stay to proceed in state court to enforce to enforce Payment Bond and contractor's bond claims against the debtor. Recovery will be limited to the sureties under various public works payment bonds and a stop notice release bond and third parties (namely public entities) holding funds based upon stop notice claims filed by the movant, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the sureties under various public works payment bonds and a stop notice release bond and third parties (namely public entities), the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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

22. 15-23164-A-7 DNL-5 — JF MCCRAY PLASTERING, INC. — MOTION FOR ALLOWANCE OF ADMINISTRATIVE INCOME TAX CLAIMS 9-12-16 [43]

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

The motion will be granted.

The trustee requests allowance of payments to the California Franchise Tax Board in the amount of $2,674 of post-petition tax liability for 2014, 2015, and 2016.

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

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

As the taxes came due after the filing of this case, the court will allow their payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

23. 11-21174-A-7 EAT-3 VS. CHASE BANK, N.A. — RALPH/TAMARA BAILEY — MOTION TO AVOID JUDICIAL LIEN 9-14-16 [33]

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 respondent creditor 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.

A judgment was entered against the debtor in favor of Chase Bank, N.A. for the sum of $5,087.67 on December 22, 2010. The abstract of judgment was recorded with El Dorado County on January 11, 2011. That lien attached to the debtor's residential real property in El Dorado Hills, 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 $300,000 as of the petition date. Docket 1. The unavoidable liens totaled $480,000 on that same date, consisting of a single mortgage in favor of Wachovia Bank. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of $1.00 in Schedule C. Docket 22.

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).

24. 16-24699-A-7 CECILIA RAMIREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 9-6-16 [13]

Final Ruling: The motion will be dismissed without prejudice. The proof of service indicates that the debtor was served at an incorrect address, 1333 N. Camino Alto #123, Vallejo, California. On August 31 the debtor filed a notice of change of address. Docket 12. The debtor's current address is 1041 Prairie Drive, Suisun, California. Accordingly, notice is defective.