**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**November 9, 2015 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, 2, 4

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a 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 DECEMBER 7, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 23, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 30, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

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

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

1. 08-37910-A-7 MARK JOCOY — MOTION TO PAY
DNL-8 — 10-19-15 [120]

**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 is seeking authority to pay $2,971.61 in ongoing homeowner association fees for the condominium real property in San Felipe, Mexico the trustee is leasing pursuant to authority granted by the court. The estate holds a 50% interest in the condominium. In addition to leasing the property, the trustee is also marketing it for sale. The HOA has sought ongoing HOA payments, pending sale of the property, as the trustee is leasing the property. The HOA is owed a total of $17,500.

11 U.S.C. § 503(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) (A) the actual, necessary costs and expenses of preserving the estate.

The court granted authority for the trustee to lease the condominium, given the anticipated extended marketing period for the property. The HOA fees cover common area maintenance expenses for the property, making them actual and necessary costs for preserving the condominium and the estate's interest in it. Thus, the court will authorize payment of $2,971.61 in ongoing HOA fees.

In addition, 11 U.S.C. § 363(b) allows the trustee to use, sell or lease property of the estate, other than in the ordinary course of business. Paying HOA fees is an integral part of any leasing administration of real property. Hence, the trustee may pay the subject HOA fees also in conjunction with the estate's authority to lease the property. The motion will be granted.

2. 08-37910-A-7 MARK JOCOY — MOTION FOR AUTHORITY TO CONTINUE LEASING ESTATE PROPERTY
DNL-9 — 10-19-15 [124]

**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 is seeking authority to enter into an agreement with International Management Services, Inc. for the continued leasing of a condominium in San Felipe, Mexico. The estate holds a 50% interest in the condominium. The co-owner is an individual named Jonathan Brickner.

In addition to leasing the property, the trustee is also marketing it for sale. It is presently being offered for sale at $250,000. The condominium is unencumbered, except for homeowner association fees, totaling approximately $17,500, $2,971.61 of which is being paid by the trustee pursuant to a related motion also being heard on this calendar. The debtor had appraised the condominium at $295,000. The prior leasing agent employed by the trustee was San Felipe Beach Rentals.

Under the subject agreement, IMSI will assist the estate in the leasing of the condominium in exchange for a 35% commission. The term of the agreement expires on the earlier of September 30, 2016 (September has only 30 days) or when the condominium sells. The trustee will have to pre-approve expenses to be incurred by IMSI.

11 U.S.C. § 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." By seeking to lease the property, the trustee is also seeking to "operate" the property within the meaning of 11 U.S.C. § 721, which provides that "[t]he court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."

The court notes that the trustee and Mr. Brickner reached a settlement, which the court has approved already, over the disposal of the property and the division of the sale proceeds. Under the settlement, the trustee has the authority to sell the property while Mr. Brickner will receive 50% of the net sale proceeds, along with a $150,000 general unsecured proof of claim against the estate, less the 50% of the net sale proceeds received by Mr. Brickner.

As the marketing period may last months before a sale is consummated, leasing the condominium while it is being marketed is in the best interest of the estate. The net lease income will help the trustee defray some costs associated with the property while being marketed. The continued leasing of the condominium then is in the best interest of the estate and it is consistent with the orderly liquidation of the condominium and the estate in general.

The trustee may lease the property and pay post-petition expenses associated with the leasing of the property in the ordinary course of business (*e.g.*, IMSI's fees). The authority to lease shall end the earlier of September 30, 2016 or when the condominium is sold. The agreement with IMSI will be approved and the motion will be granted.

The court is not authorizing the payment of any pre-petition claims (taxes, HOA fees, etc.).

3. 12-40513-A-7 ROBERT/PATRICIA STURM — MOTION TO VALUE COLLATERAL
RLG-2 — 9-29-15 [37]
VS. FRANCHISE TAX BOARD

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

The debtor is seeking to strip off the $60,487.48 lien of the California Franchise Tax Board on the debtors' real property in Rocklin, California.

The motion will be denied. This is an impermissible attempt to "lien strip" property in violation of the Supreme Court's ruling in Dewsnup v. Timm, 502 U.S. 410 (1992), which was more recently reaffirmed by the Supreme Court in Bank of America, N.A. v. Caulkett, 135 S.Ct. 1995, 1998-1999 (2015). The motion will be denied.

4. 15-23752-A-7 KAREN SIMMONS — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 — 10-18-15 [27]
SETERUS, INC. 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 in part and dismissed as moot in part.

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on September 21, 2015, 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 $120,000 and it is encumbered by claims totaling approximately $207,776. 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.

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.

5. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO SELL
BLL-6 — 10-7-15 [266]

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

The chapter 7 trustee requests authority to sell to Robert Martin for $5,000 the estate's interest in:

(1) a 2008 "BixTex" utility trailer,
(2) a 1955 Buick vehicle (inoperable and unrestored), and
(3) the claims in a pending state court action instituted by the debtor post-petition, on September 12, 2014, to recover the trailer and the Buick.

Mr. Martin obtained title to the trailer through a post-petition storage lien sale. The Buick is subject to the same storage lien, in the amount of $2,120, plus additional storage fees that have accrued since June 12, 2014.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

After this motion was filed on October 7, the debtor filed Amended Schedules B and C on October 26, listing a "box" trailer (which appears to be the trailer the trustee is selling here) and the Buick vehicle in Schedule B, each valued at $2,000 and $3,000, correspondingly. In the Amended Schedule C, the debtor has exempted the full value of both the trailer and the Buick. Docket 277.

The motion will be denied as to the trailer and Buick because although the trustee disputes the merits of the debtor's exemption claims in those items, he must file an objection to the exemption claims before the court will entertain any challenge to the exemptions. The exemptions total $5,000, making the proposed instant sale not in the best interest of the estate and creditors. The estate will net nothing from the sale, after payment of the exemption claims.

The debtor is entitled to amend his schedules at any time, including asserting new exemption claims, and the trustee may object to any new exemptions within the deadlines of Fed. R. Bankr. P. 4003(b). See also Fed. R. Bankr. P. 1009(a). The court cannot allow the trustee to object to exemptions via his reply to the opposition to this motion.

As to the pending claims for recovery of the trailer and Buick, the bankruptcy estate does not have an interest in those claims unless and until it establishes to have an interest in the trailer and Buick. As mentioned above, presently the trailer and Buick are exempt in full. Thus, the court cannot authorize sale of the claims either. The motion will be denied without prejudice.

6. 15-27764-A-7 CHRISHAWNA BURLEY — ORDER TO SHOW CAUSE 10-20-15 [17]

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

The debtor did not pay its case filing fee and did not apply to pay the fee in installments. The filing fee of $335 was due on October 1, 2015 and has not been paid yet.

7. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN 10-7-15 [54]
FF-1
VS. CHASE

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

The debtors seek avoidance of a judicial lien for $281,601.27 held by JPMorgan Chase Bank against the debtors' real property in Carmichael, California.

However, the motion will be denied because the court has no evidence that JPMorgan Chase Bank holds a judicial lien against the property. The only indication of a claim held by JPMorgan Chase Bank is in the debtors' Schedule D, which itself is not evidence, reflecting a mortgage held by JPMorgan Chase Bank in the amount of $281,601.27. Mortgages are voluntary encumbrances and are not subject to the avoidance allowance under 11 U.S.C. § 522(f)(1).

Also, was not served on the respondent creditor, JPMorgan Chase Bank, 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.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Manager or General Agent, or Agent for Service of Process." Docket 58. 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").

8. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN 10-7-15 [59]
FF-2
VS. LVNV FUNDING, L.L.C.

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

The debtors seek avoidance of a judicial lien held by LVNV Funding, L.L.C. against the debtors' real property in Carmichael, California.

However, the motion will be denied because the court has no evidence of the judicial lien against the property. The only indication of a claim held by LVNV is in the debtors' Schedule D - which itself is not evidence, referencing a lien held by LVNV in the amount of $14,749.35. Docket 62. While the motion refers to a recorded abstract of judgment in the record, but no abstract of judgment is among the motion's exhibits. Dockets 59 ¶ 8 & 62. The references in the motion to LVNV obtaining a judgment against the debtors and recording an abstract of that judgment are inadmissible hearsay. Fed. R. Evid. 802. Accordingly, the motion will be denied.

9. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 10-7-15 [49]

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

The debtors seek avoidance of a judicial lien held by Portfolio Recovery Associates, L.L.C. against the debtors' real property in Carmichael, California.

However, the motion will be denied because the court has no evidence of the judicial lien against the property. The only indication of a claim held by Portfolio Associates is in the debtors' Schedule D - which itself is not evidence, referencing two liens held by Portfolio Associates in the amounts of $1,569.43 and $4,613.04. Docket 52. But, this is not evidence, much less admissible evidence of the alleged lien.

The motion refers to a recorded abstract of judgment in the record, but no abstract of judgment is among the motion's exhibits. Dockets 49 ¶ 8 & 52.

The references in the motion to Portfolio Associates obtaining a judgment against the debtors and recording an abstract of that judgment are inadmissible hearsay. Fed. R. Evid. 802. Accordingly, the motion will be denied.

10. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — MOTION TO AVOID JUDICIAL LIEN
FF-4
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 10-7-15 [44]

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

The debtors seek avoidance of a judicial lien held by Portfolio Recovery Associates, L.L.C. against the debtors' real property in Carmichael, California.

However, the motion will be denied because the court has no evidence of the judicial lien against the property. The only indication of a claim held by Portfolio Associates is in the debtors' Schedule D - which itself is not evidence, referencing two liens held by Portfolio Associates in the amounts of $1,569.43 and $4,613.04. Docket 47. But, this is not evidence, much less admissible evidence of the alleged lien.

The motion refers to a recorded abstract of judgment in the record, but no abstract of judgment is among the motion's exhibits. Dockets 44 ¶ 8 & 47.

The references in the motion to Portfolio Associates obtaining a judgment against the debtors and recording an abstract of that judgment are inadmissible hearsay. Fed. R. Evid. 802. Accordingly, the motion will be denied.

11. 14-31999-A-7 ANGELO/LYNDA NEGRETE — MOTION FOR CONTEMPT
SJS-2 — 9-18-15 [32]

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

The debtors ask that U.S. Foods (listed in the master address list as U.S. Food Service) and Glassberg, Pollak & Associates he held civil in contempt of court for violation of the discharge injunction. The debtors ask for an evidentiary hearing to establish the sanctions to which they are entitled.

After filing the motion, the debtors dismissed Glassberg, Pollak & Associates, leaving U.S. Foods as the only respondent.

There is no private right of action under the Bankruptcy Code for violations of the discharge injunction. See 11 U.S.C. § 524; Walls v. Wells Fargo Bank, 276 F.3d 502, 508-09 (9th Cir. 2002); Cady v. SR Fin. Services (In re Cady), 385 B.R. 756, 757-58 (Bankr. S.D. Cal. 2008); Barrientos v. Wells Fargo Bank, 2009 WL 1438152 *4, 5 (S.D. Cal. Dec. 07, 2009).

Therefore, a debtor may seek damages for violation of the injunction only by invoking the court's contempt powers under 11 U.S.C. § 105. A party who knowingly violates the discharge injunction can be held in contempt under 11 U.S.C. § 105(a). See Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002)).

11 U.S.C. § 105(a) provides that: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

The moving party must prove by clear and convincing evidence that the offending party violated the order. Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). The violation must have been willful. The party seeking the sanctions must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. See Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (quoting Bennett at 1069).

"To be subject to sanctions for violating the discharge injunction, a party's violation must be 'willful.' The Ninth Circuit applies a two-part test to determine whether the willfulness standard has been met: (1) did the alleged offending party know that the discharge injunction applied; (2) and did such party intend the actions that violated the discharge injunction? In re Nash, 464 B.R. at 880 (citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n. 7 (9th Cir. 2008), aff'd, 130 S.Ct. 1367, 176 L. Ed. 2d 158 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir.2006). For the second prong, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's

conduct in fact complied with the order at issue. Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (9th Cir. BAP 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002). 'A party's negligence or absence of intent to violate the discharge order is not a defense against a motion for contempt.' Jarvar v. Title Cash of Mont., Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009)(citing Atkins v. Martinez (In re Atkins), 176 B.R. 998, 1009-10 (Bankr. D. Minn. 1994)); see also In re Sanburg Fin. Corp., 446 B.R. 793, 804 (S.D. Tex. 2011)(that the offending party may have not understood its actions to violate the discharge injunction does not negate the willfulness finding, even if true)."

Rosales v. Wallace (In re Wallace), No. NV-11-1681-KiPaD, 2012 WL 2401871 at *5 (B.A.P. 9th Cir., June 26, 2012).

The court does not have the authority to award punitive damages for violations of the discharge injunction because civil contempt sanctions are only remedial and/or compensatory in nature. See Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192, 1196 (9th Cir. 2003) (noting that civil penalties in general must either be compensatory in nature or designed to coerce compliance); see also Jarvar v. Title Cash of Montana, Inc. (In re Jarvar), 422 B.R. 242, 250 (Bankr. D. Mont. 2009).

The debtors filed this case as a chapter 7 proceeding on December 11, 2014. U.S. Foods was listed as a creditor in the master address list and on Schedule F. Docket 1 & 3. U.S. Foods was served with the notice of chapter 7 bankruptcy case electronically, on December 14, 2014. Docket 10. The debtors' discharge, entered on March 30, 2015, was also served on U.S. Foods. Docket 26. Thus, U.S. Foods knew of the debtors' bankruptcy case and March 30, 2015 chapter 7 discharge.

U.S. Foods also intended the actions that violated the discharge injunction. In an action filed pre-petition on October 31, 2014 against the debtors and third parties in state court, U.S. Foods obtained the debtors' default on January 2, 2015. U.S. Foods obtained a default judgment for $20,210.08 against the debtors on August 6, 2015. On August 13, 2015, U.S. Foods recorded a notice of judgment lien with the California Secretary of State. U.S. Foods also recorded an abstract of the judgment in Sacramento County on August 31, 2015. Docket 38.

U.S. Foods obviously intended its actions when it applied for and obtained the entry of default and default judgment, filed a notice of the judgment, and recorded an abstract of the judgment.

The debtors learned of the abstract of judgment on or about September 2, 2015. They filed this motion on September 18, 2015. When U.S. Foods received the motion, it began reversing the violations of the discharge injunction. On September 28, U.S. Foods filed a release of the notice of judgment lien with the California Secretary of State and recorded a release of the judgment lien. On October 2, U.S. Foods also filed an application to set aside the default and default judgment entered against the debtors in the action. Docket 38.

However, U.S. Foods did not reverse its discharge violations until it received the subject motion, on or about September 25. Docket 38. In other words, the filing of this motion necessitated the reversal of the discharge violations.

Nothing required a "meet and confer" with U.S. Foods prior to the filing of this motion. U.S. Foods received notice of this bankruptcy case and received

notice of the debtors' entry of discharge. This gave U.S. Foods adequate notice - both temporally and substantively - for the pending state court action to have been dismissed even before the debtors' default was entered. U.S. Foods then is in contempt of court for violating the discharge injunction.

Nevertheless, the court will award no sanctions against U.S. Foods as the debtors have not established that they are entitled to any sanctions. There is no evidence with the motion of any damages and/or harm the debtors have sustained due to the discharge violation. For instance, there is no evidence in the record of the debtors' purported emotional harm.

Additionally, the court will deny the debtors' request for an evidentiary hearing to establish the damages they have sustained and sanctions to which they are entitled. This is a law and motion calendar, where the evidence in support of each motion must be proffered in writing with the motion. The court does not allow motions to be set for a hearing only to ask the court to hold a further hearing, where more evidence is to be taken.

The court may grant a request for an evidentiary hearing only in the presence of disputed material facts and upon the movant's filing with the motion of a separate statement of disputed material facts. Local Bankruptcy Rule 9014-1(f)(1)(B). "Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c)." Id.

"Unless the Court determines that an evidentiary hearing is necessary, the evidentiary record closes upon expiration of the time for the filing of the reply." Local Bankruptcy Rule 9014-1(f)(1)(C).

This motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(1)(B). Docket 33. The debtors have not submitted with the motion a separate statement of disputed material facts. The motion does not identify any disputed material facts. It merely asks for the court to hold another hearing, to find out what are the disputed material facts and only then resolve them.

With such a record, the court cannot even determine that an evidentiary hearing is necessary. Hence, the evidentiary record on the motion closed upon expiration of the time for filing of the reply to the opposition, *i.e.*, November 2, 2015. Given the lack of evidence with the motion of damages and/or harm sustained by the debtors, the court cannot award any sanctions against U.S. Foods. Accordingly, this part of the motion will be denied.

***THE FINAL RULINGS BEGIN HERE***

12. 15-23306-A-7 ROBERT/MARIE BASSO — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 10-8-15 [19]
U.S. BANK, N.A. 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 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 Stockton, California (South Madison).

Given the entry of the debtor's discharge on August 25, 2015, 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 $85,000 and it is encumbered by claims totaling approximately $168,097. The movant's deed is the only deed against the property and secures a claim of approximately $166,952.

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. 15-23821-A-7 THOMAS ESTERL — MOTION TO AVOID JUDICIAL LIEN
MOH-2
VS. UNIFUND CCR, L.L.C. — 9-30-15 [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 Unifund CCR, L.L.C., for the sum of $4,161.80 on September 9, 2014. The abstract of judgment was recorded with Butte County on November 3, 2014. That lien attached to the debtor's residential real property in Magalia, 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 $92,500 as of the petition date. Dockets 35, 39, 1. The unavoidable liens totaled $111,899.46 on that same date, consisting of a first mortgage in favor of Wells Fargo Home Mortgage for $93,115.38 and a second mortgage in favor of Wells Fargo Financial for $18,784.08. Dockets 35, 39, 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000 in Amended Schedule C. Docket 18.

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).

14. 10-39525-A-7 CAROLYN CUNNINGHAM — MOTION TO AVOID JUDICIAL LIEN
RHM-5
VS. DISCOVER BANK — 10-9-15 [49]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Docket 50. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. Id. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. Docket 54 (indicating that the motion papers were served on September 17, 2015). It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this

was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

15. 15-26125-A-7 EDUARDO VELIS
ASW-1
U.S. BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-2-15 [17]

**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, U.S. Bank, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $210,882 and it is encumbered by claims totaling approximately $269,729. The movant's deed is in first priority position and secures a claim of approximately $259,360.

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 September 2, 2015.

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.

16. 13-21626-A-7 DEBORAH JOHNS
HLG-2
VS. AXA NETWORK, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
10-5-15 [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 AXA Network, L.L.C. for the sum of $64,367.02 on May 2, 2011. The abstract of judgment was recorded with Placer County on February 14, 2012. That lien attached to the debtor's residential real property in Roseville, 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 $324,130 as of the petition date. Dockets 23 & 24. The unavoidable liens totaled $285,714.29 on that same date, consisting of a first mortgage for $249,501.09 in favor of Ocwen Loan Servicing, a second mortgage for $32,317 in favor of HSBC, and a homeowner's association lien for $3,896.20. Docket 24. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $50,000 in Amended Schedule C. Dockets 24 & 25.

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).

17. 09-20140-A-7 SHASTA REGIONAL MEDICAL CENTER, L.L.C.
MPD-15

MOTION FOR
ADMINISTRATIVE EXPENSES
9-28-15 [768]

**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 the allowance of payments of post-petition estate income tax liability to the California Franchise Tax Board (for tax years 2010 through

2016) in the amount of $9,400 and to the IRS in the amount of $3,510 (for tax year 2011/12). Some of the amounts were already paid and some amounts are to be paid. The amounts include taxes, penalties and interest.

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

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

This case was filed as an involuntary bankruptcy case on January 6, 2009. The order for relief was entered on February 3, 2009. The tax liability in question was incurred from 2010 through 2016. As the tax liability was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

18. 15-26141-A-7 DEBRA LOGSDON — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-7-15 [13]
WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2010 Chevrolet Cobalt. The movant has produced evidence that the vehicle has a value of $7,600 ($4,156 per Schedule B) and its secured claim is approximately $9,775. Docket 15.

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 court also notes that the trustee filed a report of no distribution on September 3, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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.

19. 15-27247-A-7 JENNIFER LANGSTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. VS. — 10-5-15 [11]

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

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2009 Ford Edge. The movant has produced evidence that the vehicle has a value of $13,100 ($16,002 per Schedule B) and its secured claim is approximately $28,012.

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 court also notes that the trustee filed a report of no distribution on October 15, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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.

20. 15-26951-A-7 DOREEN BOWEN — ORDER TO SHOW CAUSE
10-20-15 [16]

**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 filed Amended Schedules A and D on October 6, 2015, but did not pay the $30 filing fee. However, the debtor paid the fee on October 21, 2015. No prejudice has resulted from the

delay.

21. 15-27851-A-7 JANIS MORSE — ORDER TO SHOW CAUSE 10-21-15 [12]

**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 November 3, 2015. No prejudice has resulted from the delay.

22. 15-27053-A-7 HSM-1 EH NATIONAL BANK VS. — TARLOCHAN/HARPREET DHALIWAL — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-7-15 [17]

**Final Ruling:** The hearing on this motion has been continued to December 7, 2015 at 10:00 a.m. Docket 46.

23. 12-29961-A-7 PLC-3 — PAUL DOSCHER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-25-15 [54]

**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.

Cianchetta & Associates, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,500 in fees (reduced from $4,380) and $16.80 in expenses, for a total of $2,516.80. This motion covers the period from October 3, 2012 through August 19, 2015. The court approved the movant's employment as the trustee's attorney on October 5, 2012. In performing its services, the movant charged an hourly rate of $300.

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 investigation of water rights and undisclosed related litigation, (2) negotiating with the debtor's former spouse, (3) collecting on a judgment entered against Jack Morehouse, and (4) 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.

24. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
BLL-7 — 10-7-15 [270]

**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.

Attorney Byron Lynch, counsel for the trustee, has filed its second and final motion for approval of compensation. The requested compensation consists of $2,100 in fees and $500 in estimated expenses, for a total of $2,600. This motion covers the period from September 16, 2015 through November 9, 2015. The court approved the movant's employment as the trustee's attorney on June 5, 2013. In performing its services, the movant charged an hourly rate of $350.

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 assets the trustee contends were not previously disclosed by the debtor, (2) preparing an agreement for the sale of those assets, (3) preparing and prosecuting a motion for sale, and (4) preparing and filing the instant compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The debtor's last-minute amendment of Schedule C to exempt the allegedly undisclosed assets in their entirety could not have been anticipated by the trustee. Docket 277. The requested compensation will be approved.

25. 15-22288-A-7 THELMA NELSON — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-4 — 9-30-15 [39]

**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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,000 in both fees and expenses, reduced from $3,233 in fees and $132.27 in expenses. This motion covers the period from April 23, 2015 through the present. The court approved the movant's employment as the trustee's attorney on April 27, 2015. In performing its services, the movant charged hourly rates of $225 and $325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with investigation of a previously undisclosed interest in a jointly owned real property; (2) reviewing schedules and other petition documents, (3) preparing and filing a motion to extend the deadline for filing objections to discharge, (4) negotiating with the debtor for her purchase of the estate's interest in the property, and (5) 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.

26. 15-24889-A-7 STEVEN/BARBIE SHOESMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-9-15 [14]
WELLS FARGO BANK, N.A. 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 in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2013 Toyota Corolla.

Given the entry of the debtor's discharge on October 13, 2015, 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 movant has produced evidence that the vehicle has a value of $13,125 ($15,398 per Schedule B) and its secured claim is approximately $16,423. Docket 16.

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 court also notes that the trustee filed a report of no distribution on August 5, 2015.

Accordingly, the motion will be granted as to the estate 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.

27. 15-22890-A-7 ANGELICA BOCHAROFF — MOTION TO CONVERT CASE 10-16-15 [41]
MS-1

**Final Ruling:** The hearing on this motion has been continued to December 7, 2015 at 10:00 a.m. Docket 55.

28. 15-26799-A-7 DANIEL JONES — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-30-15 [19]
APN-1
WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2009 Ford Mustang. The movant has produced evidence that the vehicle has a value of $11,600 ($5,000 per Schedule B) and its secured claim is approximately $13,988. Docket 21.

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. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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.