UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 19, 2016 at 10:00 a.m.

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

6, 7, 8

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 JANUARY 3, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 27, 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. 16-24509-A-7 PENNY/CLIFFORD AXENE — MOTION TO AVOID JUDICIAL LIEN
DBL-1 — 11-21-16 [25]
VS. DISCOVER PERSONAL LOAN

Tentative Ruling: The motion will be dismissed without prejudice because the correct respondent has not been served with the motion papers. Although in the motion and schedules Discover Personal Loan has been referenced as the creditor/respondent, the abstract of judgment identifies Discover Bank as the correct creditor. Dockets 1, 25, 28. Discover Bank has not been served with the motion papers. Dockets 30 & 33. Only Discover Personal Loan and Discover Financial Services, Inc. have been served with the motion. The court is unconvinced that Discover Bank is Discover Personal Loan and/or Discover Financial Services, Inc. Discover Personal Loan and/or Discover Financial Services, Inc., do not appear anywhere on the abstract of judgment. Docket 28.

In the event the debtor's counsel resets the motion, he should note that there is $25,282 of equity in the property to satisfy the lien.

2. 16-26645-A-7 DAVID MANSCH — MOTION TO VACATE DISMISSAL OF CASE
NCK-3 — 12-5-16 [34]

Tentative Ruling: The motion will be denied.

The debtor seeks to vacate the October 17, 2016 order dismissing the case. The case was dismissed due to the debtor's failure to file the verified master address list by October 12.

The debtor filed this chapter 7 case on October 5, 2016. On the same date, the court issued a notice of incomplete filing, telling the debtor that the master address list must be filed no later than October 12. The notice additionally told the debtor that the missing bankruptcy schedules and statements (including Schedules attorney's compensation statement, Schedules A/B, C, D, E/F, G, H, I, J, the means test statement, the statement of financial affairs, and the summary of assets and liabilities), must be filed no later than October 19.

The notice also stated that the case would be dismissed unless the debtor filed the missing documents by the above dates, filed a motion for extension of time for filing the missing documents, or filed a notice of hearing on the notice of intent to dismiss. Docket 3. On October 7, the court reissued the identical notice of incomplete filing. Docket 7.

The debtor did not file the master address list or a request an extension of time to file the list and the case was dismissed on October 17.

The motion will be denied for several reasons. First, the debtor makes no effort to cite or brief the legal authority for setting aside of dismissal. Even if the court were to apply Fed. R. Civ. P. 60, the motion will be denied. Fed. R. Civ. P. 60(a), as made applicable here by Fed. R. Bankr. P. 9020, prescribes that:

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is

pending, such a mistake may be corrected only with the appellate court's leave."

Rule 60(a) does not apply here as the debtor asserts no clerical mistake or a mistake arising from oversight or omission found in a judgment, order, or other part of the record. The debtor's counsel admits to receiving both notices of incomplete filing. It was the debtor's counsel who apparently confused the October 12 date by which the master address list should have been filed.

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

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

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

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

The motion has been filed timely. It was filed on December 5, approximately 45 days after dismissal of the case, and also after the filing of three prior motions that were superceded, dismissed and denied. The first motion was filed on October 18, one day after dismissal. Docket 17.

The debtor admits that there was a neglect on his part in not filing the master address list. He asserts that his counsel mixed up the October 12 deadline for filing the master address list with the October 19 deadline for filing the bankruptcy schedules and statements.

"Debtor's counsel received a Notice stating that additional documents were due October 12, 2016. Subsequent to this, Debtor's counsel received a Notice stating additional documents were due October 19, 2016; with counsel taking this date as the date for filing supplemental documentation and inadvertently missing that the Master Creditor List needed to be and had not been submitted on October 12, 2016."

Docket 36 at 2.

However, the debtor offers no reason for concluding that this neglect was excusable.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of

prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The motion says nothing about prejudice to the trustee and creditors. The court is unconvinced that there has been no prejudice to the trustee and the creditors. Importantly, by his neglect of not filing the list, the debtor's creditors have been prejudiced because they have not been timely informed of this case. Although the debtor filed a creditors' list 20 days after filing this case, on October 25, the case has been dismissed since October 17 and no creditor has been served with the notice of chapter 7 bankruptcy case. Docket 25. Approximately two and one-half months after the filing of the case, none of the debtor's creditors have been notified of the bankruptcy.

The deadline for objections to discharge and complaints to the dischargeability of debts is January 9, 2017. The delay in filing the creditors' master address list has obviously prejudiced the creditors by shortening the notice of this deadline. The initial meeting of creditors on November 9 also has passed.

Further, the dismissal resulted from the failure of the debtor's counsel to abide by deadlines set by the court. The due date for filing all petition documents, including the master address list, is always the petition filing date. The additional time given to debtors to file missing petition documents is only a grace period granted by the court at its discretion.

The debtor has not explained why the master address list was not filed with the petition.

The debtor's neglectis not excusable. It was entirely within the reasonable control of the debtor to file the missing master address list with the petition, or by the October 12 extension.

More, the court is unconvinced that the debtor acted in good faith. The subsequent notice received by the debtor was identical to the first notice received by the debtor. Both notices reference the October 12 date and October 19 date. Dockets 3 & 7. The court does not see how the debtor's counsel could have been confused by the second notice when the second notice is identical to the first notice. He identifies no specific language in the notices that led him to be confused over the date by which the master address list should have been filed.

In other words, the October 12 deadline was missed because of carelessness, not excusable neglect.

Finally, there is no other basis for granting the motion under Rule 60(b). There is no surprise, newly discovered evidence, fraud, misrepresentation, or misconduct by an opposing party. Nor does this rise to the level of "any other reason that justifies relief."

3. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
DNL-12 SELL FREE AND CLEAR OF LIENS
11-7-16 [277]

Tentative Ruling: The motion will be granted in part.

The court continued the hearing on this motion from December 5 to December 12 and then to December 19, as prior to the December 5 hearing the trustee entered into a new agreement to sell the motion.

The chapter 7 trustee requests authority to sell for $175,000 the estate's interest free and clear of Liberty Mutual's approximately $25 million secured claim in a real property (10 acres of vacant land) in Bakersfield, California to Steven B. and Kimberley D. Whaley Family Trust dated August 2, 2001. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of a $25,000 finder's fee to be paid to BAPCO, L.L.C., by the family trust. BAPCO was the original buyer for the property until the trustee discovered that BAPCO intended to immediately resell the property to the family trust for substantially more than the purchase price. BAPCO's disclosure of the family trust led to the trustee entering into an agreement to sell the property directly to the family trust, with the trust also paying a $25,000 finder's fee to BAPCO.

According to the motion, other than Liberty's claim, there are no encumbrances against the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The sale will generate some proceeds for distribution to creditors of the estate. Liberty has agreed to a carve-out of 5% for the estate, from the net sales proceeds. The sale will be approved pursuant to 11 U.S.C. § 363(b) and § 363(f)(2), as it is in the best interests of the creditors and the estate. Liberty consents to the sale. The court will waive the 14-day period of Rule 6004(h).

However, the court cannot approve the finder's fee to BAPCO, as there is no evidence from BAPCO concerning its relationship with the family trust, any agreements between BAPCO and the family trust regarding the purchase of the property, and representations BAPCO has made to the family trust about the purchase of the property.

This information is relevant to the potential for collusion between BAPCO and the family trust as to overbidding for the property. The court questions why the family trust did not appear to overbid for the property. See, e.g., 11 U.S.C. § 363(n) (providing remedies in the event "the sale price was controlled by an agreement among potential bidders").

4. 16-27768-A-7 JANEA STEWART — ORDER TO SHOW CAUSE 11-30-16 [13]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay the petition filing fee and did not apply to pay the fee in installments. The filing fee of $335 was due on November 23, 2016 and has not been paid.

5. 16-23774-A-7 MARVIN/LYNNE KAZEE — MOTION TO SELL
BHS-2 — 11-16-16 [21]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $13,050 the estate's unencumbered interest in a 2005 Toyota Tundra vehicle and a 1988 Kit Companion travel trailer to the debtors. The vehicles are subject to an exemption claim for $3,050. According to the trustee, the value of the vehicles is $14,000.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds, $10,000, for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

6. 11-39176-A-7 RAMON SANCHEZ — MOTION TO AVOID JUDICIAL LIEN
TOG-3 — 12-2-16 [35]
VS. PRECISION RECOVERY ANALYTICS, INC.

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 Precision Recovery Analytics, Inc. for the sum of $4,087.55 on October 13, 2010. The abstract of judgment was recorded with Sacramento County on June 27, 2011. That lien attached to the debtor's residential real property in Sacramento, 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 $120,071 as of the petition date. Dockets 37 & 1. The unavoidable liens totaled $112,050 on that same date, consisting of a single mortgage in favor of JPMorgan Chase Bank. Dockets 37 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $8,021 in Schedule C. Docket 37; Docket 1, Schedule C.

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).

7. 15-25585-A-7 MATTHEW WATERS — MOTION TO APPROVE COMPENSATION OF APPRAISER
MF-4 — 11-28-16 [69]

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

Bridge to Bridge Appraisers, Inc., appraiser for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $500 in fees and $0.00 in expenses. This motion covers the period from March 28, 2016 through April 30, 2016. The court approved the movant's employment as the estate's appraiser on April 11, 2016. The sought compensation is based on a flat fee agreement.

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 conducting and preparing an appraisal of a real property in San Francisco, California.

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

8. 15-25585-A-7 MATTHEW WATERS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
MF-5 — 11-28-16 [74]

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

The motion will be granted.

MacDonald Fernandez, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $31,492.35 in fees (reduced from $34,991.50) and $2,261.75 in expenses, for a total of $33,754.10. This motion covers the period from July 1, 2015 through November 9, 2016. The court approved the movant's employment as the trustee's attorney on July 29, 2015. In performing its services, the movant charged hourly rates of $100, $250 and $295.

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) evaluating the estate's interest in a real property embroiled in litigation, (2) responding to a stay relief motion by the co-owner of the property, (3) preparing and prosecuting a complaint against the co-owner of the property, asserting avoidance claims and a cause of action under 11 U.S.C. § 363(h), seeking to sell the property, (4) negotiating settlement of the litigation and the estate's interest in the property, (5) preparing and prosecuting a motion to approve compromise, and (6) preparing and filing employment and compensation motions.

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

FINAL RULINGS BEGIN HERE

9. 16-25804-A-7 PHILIP/MARTHA BEARGEON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RAS-1 — 11-9-16 [28]
OCWEN LOAN SERVICING, L.L.C. VS.

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

10. 16-25410-A-7 MUBASHER AHMED — MOTION FOR RELIEF FROM AUTOMATIC STAY
WFM-1 — 11-17-16 [27]
CITIMORTGAGE, 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 in part and dismissed as moot in part.

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

Given the entry of the debtor's discharge on November 22, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $253,000 and it is encumbered by claims totaling approximately $256,847. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on September 22, 2016.

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

The court determines that this bankruptcy proceeding has been finalized for

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

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

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

11. 07-29026-A-7 MARK/PATRICIA BUCEDI — OBJECTION TO CLAIM
DNL-5
VS. JOE MURDACA, INC. — 11-4-16 [102]

Final Ruling: The objection will be dismissed without prejudice because service 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 trustee served the objection on the respondent Joe Murdaca, Inc. 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."

Although the trustee served the respondent at the address on its proof of claim, service requirements of Rule 7004(b)(3) remain.

12. 16-26145-A-7 PETE/KATHERINE ZIMZORES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
WELLS FARGO BANK, N.A. VS. — 11-8-16 [24]

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 as to a real property in Stockton, California. The property has a value of $178,955 and it

is encumbered by claims totaling approximately $245,427. 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 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. 14-30260-A-7 KENNETH PAIGE — MOTION TO APPROVE COMPENSATION OF TRUSTEE
SLC-3 — 11-30-16 [65]

Final Ruling: The motion will be dismissed without prejudice because it was set for hearing on 19 days notice in violation of Fed. R. Bankr. P. 2002(a)(6), which requires at least 21 days notice of the hearing on motions seeking compensation in excess of $1,000. The motion was served on November 30, 2016, 19 days prior to the December 19 hearing. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "[u]nless a different amount of time is required by the Federal Rules of Bankruptcy Procedure . . . ." Because Rule 2002(a)(6) requires a minimum of 21 days of notice of the hearing and because only 19 days' was given, notice is insufficient.

14. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-2 — 11-15-16 [292]
STERNDAHL ENTERPRISES, 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, Sterndahl Enterprises, Inc., seeks prospective relief from the automatic stay to proceed in state court with its construction litigation claims against the debtor. Recovery will be limited to available insurance coverage, if any. In this case, the movant is seeking to recover against the debtor's surety and payment bond.

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.

15. 16-22567-A-7 SOPHIE JACKSON — MOTION TO REVIEW ATTORNEY'S FEES AND TO DISGORGE FEES
UST-4 — 11-22-16 [30]

Final Ruling: The motion has been resolved by stipulation. Docket 38.

16. 16-26170-A-7 CASEY REEVES — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 11-16-16 [24]
HYUNDAI MOTOR FINANCE 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, Hyundai Motor Finance, seeks relief from the automatic stay with respect to a 2013 Hyundai Veloster. The movant has possession of the vehicle. The vehicle has a value of $12,125 and its secured claim is approximately $20,415. Docket 26.

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 November 10, 2016. And, the movant has possession of the vehicle already.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral 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 has possession of the vehicle and it is depreciating in value.

17. 16-27770-A-7 CAROLE CANON — MOTION FOR RELIEF FROM AUTOMATIC STAY
WAJ-1 — 12-2-16 [12]
VINCE BONER VS.

Final Ruling: The motion will be dismissed as moot because the case was dismissed on December 12, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). The does not seek retroactive relief or relief under 11 U.S.C. § 362(d)(4).

18. 11-48272-A-7 ANNE MARQUEZ — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
SMD-2 — 11-21-16 [105]

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.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $3,029.50 in fees and $141.25 in expenses, for a total of $3,170.75. This motion covers the period from March 2, 2016 through November 16, 2016. The court approved the movant's employment as the estate's accountant on March 7, 2016. In performing its services, the movant charged an hourly rate of $365.

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 assessing tax consequences from the sale of estate property and preparing estate tax returns.

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

19. 16-26577-A-7 DARLINE SINGH — MOTION FOR RELIEF FROM AUTOMATIC STAY
KEH-1 — 11-21-16 [17]
BALBOA THRIFT & LOAN VS.

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

20. 15-28984-A-7 BEVERLY SELF — MOTION FOR RELIEF FROM AUTOMATIC STAY
ETL-1 — 11-15-16 [33]
THE BANK OF NEW YORK MELLON 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, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Palo Cedro, California.

Given the entry of the debtor's discharge on March 21, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $325,000 and it is encumbered by claims totaling approximately $397,603. The movant's deed is in first priority position and secures a claim of approximately $356,973.

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.

21. 15-29298-A-7 KENNETH/NICOLE FERRIDO — MOTION FOR SANCTIONS
KWS-2 — 10-24-16 [41]

Final Ruling: The motion has been voluntarily dismissed by the moving parties, the debtors. Docket 53. The respondent, Lobel Financial Corporation, consents to the dismissal of the motion. Docket 54.