

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 3, 2017 at 10:00 a.m.

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

1 and 4

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

January 3, 2017 at 10:00 a.m.

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JANUARY 30, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 23, 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. 08-37910-A-7 MARK JOCOY
DNL-11

MOTION FOR
AUTHORITY TO CONTINUE LEASING
ESTATE PROPERTY
12-20-16 [147]

Amended 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., to lease 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 between \$10,000 and \$14,000. The debtor had appraised the condominium at \$295,000. The prior leasing agent employed by the trustee was San Felipe Beach Rentals.

Under the 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, 2017 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, 2017 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.).

2. 16-24419-A-7 JEFFREY/JOCELYN CEPEDA MOTION TO
MKJ-1 REDEEM
11-21-16 [20]

Tentative Ruling: The motion will be denied without prejudice.

The debtors seek to redeem a 2014 Chevrolet Sonic with approximately 21,000 miles, for \$9,438. The vehicle is secured by a claim of Ally Financial, totaling approximately \$22,425. The vehicle has been claimed as exempt in the amount of \$5,350 under Cal. Civ. Proc. Code § 703.140(b)(2).

Ally opposes the motion, contending among other things that the vehicle's replacement value for redemption purposes is \$13,175.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended primarily for personal, family or household use, from a lien securing a dischargeable consumer debt if the property was exempted under § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

First, as pointed out by Ally, the exhibit identifying the purported value for the vehicle is not properly authenticated. Fed. R. Evid. 901(a) & (b). The debtors' supporting declaration merely refers to the attached Edmunds' Internet printout, identifying a retail value of \$9,438. Dockets 22 & 23. It says nothing about where, when, and how that printout was obtained. It says nothing about who obtained the printout. It also says nothing about what data was input into Edmunds' website to generate the printout. Docket 22.

Second, even if the Edmunds' printout had been properly authenticated, the declaration says nothing about the actual condition of the vehicle. Docket 22. The valuation standard under section 506(a)(2) is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." The court cannot determine whether the Edmunds' valuation takes into account the actual condition of the vehicle. In short, the debtors have not met their burden of proof to establish the vehicle's replacement value.

Third, although the debtors have submitted a reply with additional evidence to

support the vehicle's valuation, the reply's valuation evidence should have been filed with the motion in order to give the respondent an adequate opportunity to respond to the evidence.

Fourth, even if the court were to consider the evidence submitted with the reply, it is inadequate. With their reply, the debtors have submitted an affidavit of an appraiser, Daniel Hatfield, who outlines the condition of the vehicle and asserts that its "appraised value" is \$9,438. Docket 30.

However, Mr. Hatfield does not indicate whether he inspected the vehicle. Nor does he say from where and how he obtained the information about the vehicle's condition. Docket 30. The court is not satisfied that Mr. Hatfield has personal knowledge of the vehicle's condition and, as a result, he is not qualified to testify about the vehicle's replacement value under section 506(a)(2).

More, the debtors' declaration in support of their reply states that they "communicated" with Mr. Hatfield about the vehicle's condition, suggesting that Mr. Hatfield did not inspect the vehicle but instead relied on the debtors to tell him about the vehicle's condition. Docket 31.

Finally, the evidence in support of the debtors' reply is inconsistent. For example, in Mr. Hatfield's affidavit about the condition of the vehicle, the vehicle's mileage is 24,195, whereas the mileage is 27,155 in the debtors' declaration. Dockets 30 & 31.

In conclusion, even if the court were to consider all evidence of value submitted by the debtors, they have not established a replacement value for the vehicle. The motion will be denied.

3. 16-20749-A-7 SUSAN HINTON MOTION FOR
JCT-2 CONSENT TO ENTER INTO LOAN
MODIFICATION AGREEMENT
12-15-16 [43]

Tentative Ruling: The motion will be denied.

Secured creditor Planet Home Lending, L.L.C. is asking the court to approve a loan modification of a mortgage on a real property in Meadow Vista, California with the debtor.

However, the court does not approve loan modification agreements in a chapter 7 case. If the debtor wishes to modify the loan and except the personal liability on the loan from discharge, the debtor should file a reaffirmation agreement under 11 U.S.C. § 524. The court will not approve such agreements outside the protections prescribed by 11 U.S.C. § 524(c). The motion will be denied.

4. 16-27378-A-7 XOCHITL PADILLA LIVELY MOTION FOR
CJO-1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 12-20-16 [13]

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

respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$150,670 and it is encumbered by claims totaling approximately \$99,611. The movant's deed is the only encumbrance against the property.

As there is approximately \$51,058 of equity in the property, relief under section 362(d)(2) is unwarranted.

However, the trustee filed a report of no distribution on December 14, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the property. The foregoing is cause for granting relief from stay.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a 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.

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

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

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and

a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. 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. 16-27982-A-7 JAMES BUTLER MOTION FOR
LHL-1 RELIEF FROM AUTOMATIC STAY
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS. 12-8-16 [17]

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

The movant, Wilmington Savings Fund Society, FSB, seeks relief from stay as to a real property in Corona, California, under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4). The movant purchased the property at a foreclosure sale pre-petition.

Relief under 11 U.S.C. § 362(d)(1) and (d)(2) will be dismissed as moot because the bankruptcy case was dismissed on December 20, 2016, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B).

Relief under subsection (d)(4) will be denied. Such relief is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

FINAL RULINGS BEGIN HERE

6. 14-29813-A-7 LISA AHRENS MOTION TO
DNL-3 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
11-23-16 [126]

Final Ruling: This motion has been resolved by stipulation between the trustee and The Golden One Credit Union. Dockets 132 & 134.

7. 15-29525-A-7 LARRY/KELLY BUCKINGHAM MOTION TO
KJH-2 APPROVE COMPENSATION OF ACCOUNTANT
11-20-16 [71]

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 \$1,752 in fees and \$113.76 in expenses, for a total of \$1,865.76. This motion covers the period from July 18, 2016 through November 18, 2016. The court approved the movant's employment as the estate's accountant on July 26, 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 the preparation of 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.

8. 16-23137-A-7 NELLIE SCHNEIDER MOTION FOR
ETL-1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 11-25-16 [81]

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 Oroville, California. The property has a value of \$64,309 and it is encumbered by claims totaling approximately \$112,761. 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 December 14, 2016.

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

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

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

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

9.	16-25743-A-7 VASYL PECHKO HSM-1	MOTION TO APPROVE STIPULATION 11-28-16 [29]
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Final Ruling: The motion will be dismissed as moot because the court has already approved the subject stipulation between the movant Small Business Term Loans, Inc. and the debtor, and the court has extended the deadline for filing complaints objecting to discharge and/or determining the dischargeability of debts, pursuant to the stipulation. Docket 34.

10.	15-27053-A-7 TARLOCHAN/HARPREET MPD-5 DHALIWAL	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 11-29-16 [101]
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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.

Michael Dacquisto, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$8,000 in fees (reduced from \$15,162.50) and \$337.25 in expenses, for a total of \$8,337.25. This motion covers the period from October 9, 2015 through the present. The court approved the movant's employment as the trustee's attorney on November 2, 2015. In performing its services, the movant charged hourly rates of \$350 and \$375.

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 administration of the debtors' business, gas station, and a real property with a rented mobile home on it,
- (2) reviewing schedules and other petition documents,
- (3) responding to a creditor's stay relief motion secured by the real property,
- (4) reviewing offers for the purchase of the real property,
- (5) researching whether the security interest in the property extended to the mobile home and rents from it,
- (6) advising the trustee about various legal issues, including, without limitation, recovery of the rental income from the mobile home,
- (7) preparing a turnover demand for the rental income,
- (8) preparing and prosecuting a motion for turnover,
- (9) responding to opposition to the motion,
- (10) assisting the estate with the actual collection of the rental income,
- (11) preparing and prosecuting a motion to sell the mobile home,
- (12) responding to inquiries from a judgment creditor about the sale of the mobile home, and
- (13) preparing and filing employment and compensation motions.

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

11. 16-26968-A-7 FRANK/NATASHA CONSTANCIO MOTION FOR
NLG-1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST COMPANY VS. 12-2-16 [12]

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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$250,000 and it is encumbered by claims totaling approximately \$260,382. The movant's deed is in first priority position and secures a claim of approximately \$173,905.

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 December 15, 2016.

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

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

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

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

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

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

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