UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 16, 2016 at 10:00 a.m.

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

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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 MARCH 14, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 29, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 7, 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.

MATTERS FOR ARGUMENT

1. 11-34464-A-7 STUART SMITS — APPLICATION AND ORDER TO APPEAR FOR EXAMINATION (STUART LANSING SMITS) 10-14-15 [61]
   11-2636
   BARDIS V. SMITS

Tentative Ruling: None. The judgment debtor shall appear and be sworn in at 10:00 a.m. and then the judgment creditor may examine the judgment debtor outside the courtroom.

2. 15-28031-A-7 SATORI TODD — ORDER TO SHOW CAUSE 1-19-16 [24]

Tentative Ruling: The petition will be dismissed.

The debtor filed Amended Schedules C and F on January 5, 2016, but did not pay the $30 filing fee. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

3. 15-28350-A-7 NIESHA HARRIS — MOTION FOR SANCTIONS 1-12-16 [14]
   RJM-1

Tentative Ruling: The motion will be dismissed at the request of the debtor provided the respondent has no objection the dismissal.

After the respondent filed opposition to this motion on January 28 and the court continued the hearing on the motion for sanctions from February 1 to February 16, the debtor filed a request to voluntarily dismiss the motion. Docket 29. Because opposition has been filed, the debtor cannot unilaterally dismiss the motion. However, if the respondent has no objection, the motion will be dismissed.

4. 15-29258-A-7 JAMES KEMPVANEE — MOTION TO DISMISS CASE 1-6-16 [17]
   SLC-1

Tentative Ruling: The motion will be granted and the case will be dismissed.

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on January 6, 2016.

Although the debtor filed a response to the motion, the response does not address his failure to attend the meeting of creditors on January 6. The response addresses the debtor's inability to make mortgage payments, the passing of his two sisters and his inability to make a trip to Texas, but it mentions nothing about why he did not appear at the January 6 meeting. Docket 20.

The debtor's failure to appear at the meeting of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

5. 15-29861-A-7 MOH-1 — MARIA GARRIDO AND JEREMY HARRIS — MOTION TO COMPEL ABANDONMENT 1-12-16 [11]

Tentative Ruling: The motion will be granted as provided below.

The debtors request an order compelling the trustee to abandon the estate's interest in their sole proprietorship landscape business, Blue Moon Landscaping.

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

According to the motion, the business assets include a 2003 Chevy Silverado truck (scheduled value of $5,869), a trailer (scheduled value of $200), a lawn mower (scheduled value of $800), and hand and gardening tools (scheduled value of $300). The assets have been claimed fully exempt in Schedule C. Given the exemption claims, the court concludes that the business – to the extent of the assets listed in the motion - is of inconsequential value to the estate. The court will compel abandonment of the assets.

The court will not deem the trustee's interest in the assets "avoided," as requested by the motion. This makes no sense.

6. 15-28278-A-7 — LORENZO/ALICIA CANILLO — MOTION TO DISMISS CASE 1-15-16 [16]

Tentative Ruling: The motion will be denied.

Creditor Francisco Rosas seeks dismissal of the case because the debtors "added" his claim to their Schedule F, based on a pre-petition personal injury settlement. The movant disputes being owed anything by the debtors.

The debtors respond that they listed in Schedule F a $7,500 claim owed to the movant, based on a *potential* liability.

The motion is without merit.

First, if the movant does not hold a claim against the debtor, the movant has no standing to bring this motion. Only parties in interest, such as creditors, have standing to seek dismissal.

A plaintiff must meet both the constitutional and prudential requirements of standing. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

Second, the increase of the debtors' claims listed in Schedule F - by the adding of the movant's purported $7,500 claim - does nothing to impact this case. Specifically, it has no effect on whether the debtors will receive a chapter 7 discharge. The court rejects the movant's contention that the "adding" of the claim somehow makes the debtors more likely to receive a chapter 7 bankruptcy discharge.

Third, the trustee filed a report of no distribution on December 17, 2015, meaning that no creditors will receive a distribution in this case, regardless of the amount or merit of the claims against the debtors.

Lastly, even if the movant is correct that he is not owed anything by the debtors, it is not uncommon for debtors to list *potential* liabilities in their schedules, out of an abundance of caution, when they are not certain whether and to what extent they may still owe a liability on a debt. It is the chapter 7 bankruptcy trustee who eventually reviews the claims and determines which are meritorious and should be paid and which lack merit and should be objected to. But, this happens only in the event there are assets that could be liquidated for the benefit of creditors, which is not the case here.

7. 14-27980-A-7 GKUBI SMART — MOTION TO SELL AND TO PAY EXPENSES 1-11-16 [171]
HSM-12

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $400,000 the estate's interest in a real property in Tracy, California to Ralph Fierro. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

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

The property is subject to two mortgages, one in favor of Pacific Union Financial, LLC for approximately $182,074.58 and the other in favor of the Department of Housing and Urban Development for approximately $70,999.23.

The property is also subject to a $100,000 exemption claim by the debtor. Docket 161. The trustee is seeking authority to pay all of the foregoing from escrow, in addition to the typical sales costs (50% of escrow fees, title insurance policy premium, city documentary transfer tax; the cost of a natural hazard zone disclosure report; recordation costs; home warranty plan cost, etc.).

The sale will generate some proceeds - approximately $15,000 - for distribution to creditors of the estate.

The sale will be approved pursuant to 11 U.S.C. § 363(b), subject to one condition. The motion makes no mention of what are the tax consequences for the estate from the sale, if any. Subject to the trustee clarifying this, the motion will be granted and the court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission.

THE FINAL RULINGS BEGIN HERE

8. 15-27004-A-7 ANETTE GUSTO — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDW-1 — 1-15-16 [53]
CAM IX TRUST VS.

Final Ruling: The motion will be dismissed without prejudice because it was served on the debtor at an incorrect address. Docket 58. The debtor submitted a change of address on December 9, 2015. She is no longer living in Roseville, California. Docket 49.

9. 15-28509-A-7 RICHARD/MYRNA THOMAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 1-11-16 [14]
JP MORGAN CHASE 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, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Wheatland, California. The property has a value of $251,736 and it is encumbered by claims totaling approximately $252,516. The movant's deed is in first priority position and secures a claim of approximately $180,748.

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

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.

10.	15-27925-A-7	BILLIE SPENCE AND DELANA	MOTION TO
	AFL-1	SCOTT	AVOID JUDICIAL LIEN
	VS. HERITAGE COMMUNITY CREDIT UNION		1-12-16 [13]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Heritage Community Credit Union, 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.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail, even though an officer of the respondent was served with the motion. Docket 17.

And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

11. 15-28841-A-7 RICHARD ANSELMO
VVF-2
HONDA LEASE TRUST VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-12-16 [27]

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, Honda Lease Trust, seeks relief from the automatic stay with respect to a leased 2014 Honda Civic. The movant has produced evidence that the vehicle has a value of $12,525 and the outstanding debt under the lease agreement totals approximately $19,476. Docket 30. The debtor also has not made two post-petition payments under the lease agreement. These facts make it unlikely that the trustee will attempt to assert any interest in the lease. The court also notes that the trustee filed a report of no distribution on December 16, 2015.

The court concludes that the above is cause for the granting of relief from stay.

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

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) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

12. 15-29841-A-7 MARIE GUAZON

ORDER TO
SHOW CAUSE
1-28-16 [35]

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 an Amended Master Address List on January 14, 2016, but did not pay the $30 filing fee. However, the debtor paid the fee on February 5, 2016. No prejudice has resulted from the delay.

13. 15-28953-A-7 KAREN OGA
MET-1
BANK OF SAN FRANCISCO VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-19-16 [19]

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, Bank of San Francisco, seeks relief from the automatic stay with respect to personal property, including inventory, equipment, receivables, accounts, and insurance claims. The movant has produced evidence that this property has a value of approximately $68,540.47. Docket 21 at 3-4.

In addition, the movant seeks relief from stay as to different equipment, which is secured by the movant's claim and an approximately $40,000 claim of One View Financial. Docket 21 at 4. There is no consensus between the movant and One View about which entity is in first position as to this equipment. Id. The movant has produced evidence that the equipment has a value of $39,416. Id.

The movant holds a claim totaling $76,881. Docket 21 at 5.

The court concludes that there is no equity in any of the above-described property 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 January 7, 2016.

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.

14. 15-26755-A-7 ALICIA MIRAMONTES
JCW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-15-16 [22]

Final Ruling: The motion will be dismissed without prejudice because it was not served on counsel for the trustee. See Docket 19.

15. 09-23465-A-7 MOORE EPITAXIAL, INC. MOTION TO PAY
WFH-4 1-7-16 [266]

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 that amounts owed to the California Franchise Tax Board for 2015 and 2016 post-petition income taxes in the amount of $800, plus penalties in the amount of $22 and interest; and 2017 income tax in the amount of $800 be allowed and paid as an administrative expense.

11 U.S.C. § 503(b)(1)(B) provides that "[a]fter 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 on February 27, 2009. The tax liability in question covers the period from 2014 through 2017. As the tax is being 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.

16. 15-28584-A-7 DAVID BALL MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 1-5-16 [14]
DEUTSCHE BANK NATIONAL TRUST CO. 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 be dismissing the motion as moot, 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 dismissed as moot but the absence of the automatic stay will be confirmed.

The movant, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Orangevale, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or

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

On March 20, 2014, the debtor filed a chapter 13 case (case no. 14-22849). But, the court dismissed that case on September 20, 2015 due to the debtor's failure to make plan payments and prosecute the case. Case No. 14-22849, Docket 137. The debtor filed the instant case on November 3, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on December 3, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on December 3, 2015, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

17. 11-24596-A-7 JOHN/COLLEEN REKERS — MOTION TO AVOID JUDICIAL LIEN
SLH-2
VS. ROCKLIN 65, L.L.C. — 12-19-15 [25]

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 debtors in favor of Rocklin 65, LLC for the sum of $114,896.07 on December 2, 2008. The abstract of judgment was recorded with Placer County twice, on March 23, 2009 and on October 20, 2010. That lien attached to the debtors' residential real property in Rocklin, 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 $265,500 as of the petition date. Docket 27. The unavoidable liens totaled $304,941.58 on that same date,

consisting of a single mortgage in favor of Wachovia Mortgage. Docket 28. 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. Dockets 24 & 28.

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).