UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 14, 2016 at 10:00 a.m.

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

4, 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 APRIL 11, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 28, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 4, 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. 15-24710-A-7 HELEN KING — MOTION TO AVOID JUDICIAL LIEN
TAG-3
VS. BH FINANCIAL SERVICES, INC. — 2-23-16 [28]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of BH Financial Services, Inc. for the sum of $5,670.39 on July 29, 2013. The abstract of judgment was recorded with Sacramento County on January 27, 2014. That lien attached to the debtor's residential real property in Sacramento, California. The debtor is seeking avoidance of the lien.

The motion will be denied because none of the schedules attached to the motion have been filed with the court. The motion attaches Amended Schedules A, C, and D but those schedules were never filed with the court. Docket 31. Although the Schedule A appended to the motion is not marked as "Amended Schedule," that schedule is different from the only Schedule A filed with the court. Docket 1.

More, the only Schedule C filed with the court – the debtor's original Schedule C, does not contain an exemption claim in the subject property. Docket 1.

The formula in 11 U.S.C. § 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." The absence of an exemption claim in Schedule C reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of liens, she may not claim an impairment of such an exemption.

Accordingly, the motion will be denied without prejudice.

Finally, the debtor should note that parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Service of an Amended Schedule C then is indispensable to giving such parties in interest notice of the exemption amendment.

2. 13-30212-A-7 ARMANDO/NORA COTA — OBJECTION TO EXEMPTIONS
DMW-2 — 2-4-16 [36]

Tentative Ruling: The objection will be sustained.

The trustee objects in part to the debtors' exemption of an employee discrimination action with a scheduled value of $100,000. $25,570 of the action has been exempted under Cal. Civ. Proc. Code § 703.140(b)(5) and the remainder has been exempted under Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E). The objection pertains only to the exemption under Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E).

The debtors oppose the objection, contending only that it is untimely.

This chapter 7 case was filed on August 1, 2013. The debtor's original schedules did not disclose the employee discrimination action. Docket 1. The trustee filed a report of no distribution on September 11, 2013 and the debtors received their chapter 7 discharge on November 18, 2013. Docket 13.

On July 7, 2015, the debtors filed Amended Schedules B and C, disclosing the employee discrimination action and claiming the foregoing exemptions. Docket 17. The court entered an order reopening the case on July 28, 2015 and a corresponding amended order reopening the case on August 3, 2015, pursuant to a motion to reopen filed by the U.S. Trustee on July 27, 2015. Dockets 19, 22, 25. The movant was appointed as a trustee in the case on August 11, 2015.

On or about August 21, 2015, the trustee held a meeting of creditors. Both debtors and their counsel appeared. The trustee adjourned the meeting, continuing it to September 22, 2015.

On September 22, 2015, the trustee held a continued meeting of creditors. The debtors did not appear, only their counsel appeared. The trustee adjourned the meeting, continuing it to November 3, 2015 and issuing a notice of assets.

On November 3, 2015, the trustee held a continued meeting of creditors. The debtors did not appear, only their counsel appeared. The trustee adjourned the meeting, continuing it to December 15, 2015 and issuing a notice of assets.

On December 15, 2015, the trustee held a continued meeting of creditors. The debtors did not appear, only their counsel appeared. The trustee adjourned the meeting, continuing it to February 23, 2016 and issuing a notice of assets.

This exemption objection was filed on February 4, 2016.

On February 23, 2016, the trustee held a continued meeting of creditors. The debtors did not appear, only their counsel appeared. The trustee concluded the meeting and issued a notice of assets.

The objection is timely. Fed. R. Bankr. P. 4003(b)(1) provides that:

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, *whichever is later*. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

Although the debtors filed their amendments to Schedules B and C on July 7, 2015, the trustee had not concluded the meeting of creditors when this objection was filed on February 4, 2016. The trustee did not conclude the meeting of creditors until February 23, 2016. This is consistent with Rule 4003(b)(1), which provides for the "later" of the two deadlines – 30 days after conclusion of the creditors' meeting or 30 days after amendment to the schedules.

The court rejects the contention that the objection violates Smith v. Kennedy (In re Smith), 235 F.3d 472 (9th Cir. 2000). That case addressed a trustee's indefinite continuance of creditors' meetings. This is not the case here. Every time the trustee in this case continued the meeting of creditors, he identified a specific date to which that meeting was continued. From a review of the case docket, the court discerns no evidence that the trustee continued the meeting of creditors indefinitely.

Nor have the debtors provided any evidence, much less admissible evidence, in support of their opposition. The debtors' opposition is not accompanied with a declaration, making factual assertions in support of the debtors' legal

contentions.

In addition, the opposition is mostly unintelligible, devoid of any specific factual assertions. For instance, on page one, it states that "[t]he debtor's confirmed plan is not feasible." Docket 45 at 1. This is a chapter 7 case and there is no bankruptcy plan. Also, the last word on page one of the opposition – "The" - is the beginning of a sentence. Yet, page two starts with the beginning of another sentence.

The opposition does not even give a complete cite to the Smith case. It refers to the case merely as "(See Smith v. Kennedy (In re Smith)."

Further, according to Smith, a trustee is allowed to announce the continued date and time

"Under any reasonable construction of the rule, a delayed announcement [of the 'the adjourned date and time'] would have to be made at least within thirty days of the last meeting held; otherwise, the whole purpose of the thirty-day requirement of Rule 4003(b) would be frustrated."

Smith at 476.

In Smith, unlike here, "no adjourned date and time was ever announced, and the creditors' meeting never resumed." Smith at 477. In this case, the trustee announced adjournment and the continued date and time within Smith's 30-day deadline. For all continuances, the trustee adjourned the meeting and announced the adjourned/continued date and time on the date of the meeting being continued, the day after, or – in the case of the August 21 meeting - on September 10, 2015, 20 days later.

Smith stated, when quoting In re Levitt, 137 B.R. 881, 883 (Bankr. D. Mass. 1992): "A trustee who continues a meeting generally and does not within a reasonable time announce the adjourned date and time *and reconvene* the meeting thereby defeats the policy implicit in these rules." Smith at 476. In other words, Smith recognizes a requirement for reconvening the meeting of creditors within a reasonable time as well.

Satisfaction of this reconvening requirement is wholly fact driven. Reasonableness of the time within which the trustee reconvened each meeting depends on the circumstances surrounding each continuance. The court needs facts to determine whether the trustee's continuances were done within reasonable time.

As mentioned above, the debtors' opposition is devoid of any information or evidence, much less admissible evidence, about why the meetings were continued four times, why they were continued to the dates they were continued to, and what transpired at each of those meetings.

The court does not have sufficient information or evidence in this record to determine that the trustee somehow improperly manipulated the exemption objection deadlines to engineer the filing of the instant objection either.

Given the foregoing, the objection is timely.

Turning to the merits of the objection, Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E) provides for the exemption of:

"The debtor's right to receive, or property that is traceable to, any of the following:

". . .

"(D) A payment, not to exceed twenty-four thousand sixty dollars ($24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent.

"(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Proc. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

However, as discussed above, the debtors have not produced any evidence on whether they satisfy the requirements of Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E). The opposition is not accompanied with a supporting declaration.

For example, there is nothing in the record indicating that the debtor-plaintiff in the employee discrimination action suffered personal bodily injury, implicating Cal. Civ. Proc. Code § 703.140(b)(11)(D). Similarly, there is nothing in the record indicating that the proceeds from the discrimination action are reasonably necessary for the support of the debtor-plaintiff and any dependent of that debtor.

Even if the objecting trustee had the ultimate burden of persuasion, the trustee cannot prove a false negative. He cannot prove that the debtors do not meet the requirements of the Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E) exemption.

Given the debtors' failure to meet their burden of proof on establishing their entitlement to the exemptions under Cal. Civ. Proc. Code § 703.140(b)(11)(D)&(E), or at least come forward with an initial showing on this issue, the exemption will be disallowed to the extent it relies on those

provisions. The objection will be sustained.

3. 15-28018-A-7 MICHELLE SMITH — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
RJM-1 — 2-16-16 [17]

Tentative Ruling: The motion will be granted in part.

The debtor is asking the court to award damages against Tammy Mascadri for an automatic stay violation that led to the issuance of a civil warrant for the debtor's arrest, for not appearing at a post-petition hearing in state court on an order for examination.

This motion seeks:

(1) $2,800 in actual damages against Ms. Mascadri, including $1,000 for the debtor's time and efforts to resolve the arrest warrant and $1,800 for the attorney's fees she is incurring, and

(2) $10,000 in punitive damages.

Ms. Mascadri filed a collection action in state court against the debtor and obtained a pre-petition money judgment against the debtor for approximately $10,000. On October 5, 2015, the debtor was served with an order for examination obtained by Ms. Mascadri in an effort to enforce the judgment against the debtor. The order required the debtor to appear on October 16, 2015 in state court for an examination.

The debtor filed the instant bankruptcy case on October 15, 2015. After filing the case on behalf of the debtor, the debtor's counsel telephoned Ms. Mascadri on October 15, apprising her of the bankruptcy filing.

The debtor did not appear at the October 16 examination hearing in state court. Ms. Mascadri appears to have attended the October 16 hearing because pursuant to the order for examination she had requested, the state court issued a civil warrant for the debtor's arrest, due to her nonappearance at the October 16 hearing.

The meeting of creditors in the case was held on November 24, 2015. Ms. Mascadri appeared at the meeting. The trustee concluded the meeting on November 24, 2015, issuing a report of no distribution.

On February 12, 2016, the debtor was served at her home with the arrest warrant and a further notice to appear in state court on March 25, 2016. On February 16, 2016, the debtor received her chapter 7 discharge and filed this motion.

11 U.S.C. § 362(a) provides that:

"*Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—*

"*(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the*

case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

"(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

"(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

Actions taken in violation of the automatic stay are void. Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006).

A creditor who has violated the automatic stay is *required* to reverse any collection efforts that, even though were started pre-petition, resulted in a post-petition collection actions. For instance, the stay requires the creditor to direct a levying officer to return or reverse post-petition collections. In re Johnson, 262 B.R. 831, 847-48 (Bankr. D. Idaho 2001). The stay obligates the creditor to maintain or restore the status quo that existed as of the petition date. Id. (quoting Franchise Tax Board v. Roberts (In re Roberts), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994)).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7 (B.A.P. 9th Cir. 2002); Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

A violation of the stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2002). "In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003).

Neither good faith belief that the creditor had a right to the property, nor good faith reliance on the advice of counsel are relevant. Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 482-83 (9th Cir. 1989); Sciarrino v. Mendoza, 201 B.R. 541, 547 (E.D. Cal. 1996).

A movant can recover attorney's fees and costs as actual damages under section 362(k) for enforcing the automatic stay, for remedying the stay violation, and for prosecuting a request for damages. America's Servicing Company v. Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095, 1100-01 (9th Cir. 2015) (en banc) (expressly overruling Sternberg v. Johnston, 595 F.3d 937, 940

(9th Cir. 2010)); see also Snowden v. Check Into Cash of Washington, Inc. (In re Snowden), 769 F.3d 651, 658 (9th Cir. 2014).

In determining whether and to what extent to award punitive damages, courts consider the nature of the violations, the amount of compensatory damages awarded, and the wealth of the party who has committed the violations. Prof'l Seminar Consultants, Inc. v. Sino American Tech., 727 F.2d 1470, 1473 (9th Cir. 1984). Punitive damage awards may not be grossly excessive or arbitrary. BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996) (a single-digit ratio between punitive and compensatory damages will satisfy due process); see also State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003).

As the bankruptcy stay is an injunction against the continuation of a judicial action or proceeding against the debtor, to recover a pre-petition claim against the debtor, Ms. Mascadri's continued collection of her pre-petition judgment claim against the debtor, by not reversing the process of obtaining an examination of the debtor, violated the automatic stay.

Ms. Mascadri was required to reverse her collection efforts against the debtor, including reversing the order for examination process, calculated to further Ms. Mascadri's collection of her pre-petition judgment against the debtor. Her failure to reverse the order for examination process violated the stay.

The violation was willful because Ms. Mascadri knew of the bankruptcy case and intended the violation actions. She learned of the automatic stay in this case on October 15, when the debtor's counsel telephoned her and told her about the filing and about the stay. Docket 20 ¶ 3. This was the day before the state court issued the arrest warrant for the debtor on October 16.

On October 15, along with calling her, the debtor's counsel sent Ms. Mascadri a written notice of the bankruptcy filing as well. Docket 21, Ex. C. She was also listed as a creditor in the case, receiving the typical notices listed creditors in a bankruptcy case receive in the course of the case. Docket 1, Schedule F.

Despite knowing of the bankruptcy stay, Ms. Mascadri failed to reverse the examination process of the debtor on October 16 or after that date, thus leading to the issuance and enforcement of the arrest warrant against the debtor.

As a result, the debtor – an individual - suffered the harm of having to redress an active warrant for her arrest. The debtor found out about the arrest warrant on February 12, 2016, when she was also served with a notice to appear in state court on March 25, 2016. Docket 19 ¶ 11. Ms. Mascadri's stay violation compelled the debtor to investigate the reason for the warrant, take time off work and retain an attorney to seek protection from the effects of the warrant.

Accordingly, the court will award actual damages to the debtor for Ms. Mascadri's stay violations. The debtor has presented no specific evidence of how much time she has taken and/or will take off work to resolve the warrant issues. The court will not speculate.

Besides the debtor's attorney's fees, there is no evidence of actual damages in the record. The court is satisfied with the summary of the services of the debtor's counsel pertaining to the prosecution of this motion and defending the debtor in state court. His services include "communicating with the client

regarding the warrant, sending official notifications to Mascadri, researching and drafting this Motion, anticipated time appearing in the bankruptcy court for this matter and also anticipated time appearing at the Debtor's warrant hearing on March 25, 2016, and follow-up matters with the court and Creditor after the hearing." Docket 20 ¶ 8.

The projected total of six hours for such services is reasonable, as it encompasses services for litigation in two forums. The $300 hourly rate of the debtor's counsel is also reasonable, given the unusual nature of this post-bankruptcy litigation. Accordingly, the court will award $1,800 to the debtor as actual damages for her attorney's fees.

In addition, the court will award punitive damages. Ms. Mascadri's stay violation was particularly egregious because although she knew of the bankruptcy case and the stay before the issuance of the arrest warrant, she did nothing to stop the arrest warrant process against the debtor.

Moreover, if Ms. Mascadri had not appeared at the October 16 hearing in state court and had not urged the continued prosecution of the examination order, the state court would have had no reason to issue the arrest warrant. In other words, Ms. Mascadri must have taken affirmative actions to prompt the state court to issue the arrest warrant, in spite of her knowing that this bankruptcy case had been filed and the automatic stay prevented the further collection of her pre-petition claim against the debtor.

The court will award $2,500 in punitive damages against Ms. Mascadri. This amount is reasonable in relation to the amount of the compensatory actual damages. Ms. Mascadri shall pay the damages awarded by this court to the debtor by sending payment to the debtor's counsel no later than seven days after entry of the order on this motion. The motion will be granted in part.

4. 15-29033-A-7 FRANCISCO PENA — MOTION FOR RELIEF FROM AUTOMATIC STAY
KH-1
BSR REALTY, INC. VS. — 2-29-16 [36]

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, BSR Realty, Inc., seeks relief from the automatic stay as to a commercial real property in Hayward, California. The debtor has been leasing the property from the movant. The debtor has not made approximately two post-petition payments to the movant under the lease agreement. In addition, the debtor is $48,799 delinquent in CAM charges.

This is a liquidation proceeding. The debtor is not operating and it has no

ownership interest in the property as he is leasing it only. The foregoing is cause for the granting of relief from stay.

Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with an eviction action against the debtor in state court. If the movant prevails, no monetary claim may be collected from the debtor or the estate. The movant is limited to recovering possession of the property if such is permitted by the state court.

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 waived.

5.	16-20145-A-7 MICHELE ROGERS NLG-1 SETERUS, INC. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-10-16 [19]

Tentative Ruling: The motion will be granted.

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

The debtor opposes the motion, contending that the movant is violating California's Homeowner's Bill of Rights by seeking to foreclose on the property, while considering the debtor's forbearance application.

Whether or not the movant is violating California law will not and cannot be determined on a motion, much less this motion. Such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(9).

Further, even if the movant were violating California's HBOR, this is not a defense to a motion under 11 U.S.C. § 362(d)(2), which requires the court to grant relief from stay as to a property that has no equity and is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2) states that "the court *shall* grant relief from the stay" under such circumstances.

The property has a value of $235,000 and it is encumbered by claims totaling approximately $289,238. The movant's deed is in first priority position and secures a claim of approximately $259,238.

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.

6. 16-20279-A-7 RAISA RAZUMOV — MOTION TO COMPEL ABANDONMENT
MS-1 — 2-29-16 [19]

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Woodland, California. The property is over-encumbered.

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

The debtor has produced evidence that the value of the property is $565,014. Docket 22. The property is encumbered by a single deed of trust in favor of FCI Lender Services in the amount of approximately $889,005.

Given the property's value and encumbrances, the court concludes that the property is of inconsequential value to the estate. The court also notes that the trustee filed a report of no distribution on February 26, 2016. The motion will be granted.

7. 15-24481-A-7 EMERY ULRICH — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 9-11-15 [12]
WELLS FARGO BANK, N.A. VS.

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Red Bluff, California.

Given the entry of the debtor's discharge on October 6, 2015, the automatic

stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $250,000 and it is encumbered by claims totaling approximately $261,460. 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.

8. 15-29386-A-7 VALERIY RAZUMOV — MOTION TO COMPEL ABANDONMENT 2-29-16 [63]
MS-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Woodland, California. The property is over-encumbered.

11 U.S.C. § 554(b) provides that on request of a party in interest and after

notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtor has produced evidence that the value of the property is $565,014. Docket 66. The property is encumbered by a single deed of trust in favor of FCI Lender Services in the amount of approximately $889,005.

Given the property's value and encumbrances, the court concludes that the property is of inconsequential value to the estate. The court also notes that the trustee filed a report of no distribution on February 25, 2016. The motion will be granted.

FINAL RULINGS BEGIN HERE

9. 15-29100-A-7 CYNTHIA HILL
PPR-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-8-16 [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 dismissed as moot.

The movant, Bank of America, seeks relief from the automatic stay with respect to a boat, engine and a trailer.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on November 23, 2015 and a meeting of creditors was first convened on January 20, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 23, 2015. The debtor filed a statement of intention on the petition date, but without even listing the subject personal property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention on the petition date, the debtor did not list the subject personal property. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on December 23, 2015, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay

terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on December 23, 2015.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

10. 14-32106-A-7 NATHAN/MICHELLE LOMMASSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 2-3-16 [43]
AMERICREDIT FINANCIAL SERVICES, 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 dismissed as moot.

The movant, Americredit Financial Services, Inc., seeks relief from the automatic stay with respect to a 2011 VW Jetta vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on December 15, 2014 as a chapter 13 proceeding. The case was converted to chapter 7 on October 27, 2015. Docket 28. A meeting of creditors was first convened on December 3, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 26, 2015. The debtor filed a statement of intention on November 6, 2015, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle. Docket 34.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on January 2, 2016, 30 days after the December 3, 2015 meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on January 2, 2016.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

11. 15-29607-A-7 MICHAEL DIXON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1
THE BANK OF NEW YORK MELLON VS. — 2-11-16 [18]

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, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Durham, California. The property has a value of $450,000 and it is encumbered by claims totaling approximately $546,656. 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 February 9, 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.

12. 14-31810-A-7 MAHMOOD DEAN — MOTION TO COMPEL ABANDONMENT 2-12-16 [56]
BHS-1

Final Ruling: This motion has been voluntarily dismissed. Docket 64.

13. 12-28413-A-7 F. RODGERS CORPORATION — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-12-16 [873]
ERH-1
WEBCOR CONSTRUCTION, L.P. VS.

Final Ruling: The motion will be dismissed without prejudice because it was not served on the debtor. Docket 880.

14. 16-20715-A-7 CAROLINE KNIGHT — ORDER TO SHOW CAUSE 2-23-16 [11]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, on February 25, 2016, the court

entered an order for payment of the filing fee in installments. Docket 13. The first installment of $86 due on March 28, 2016 has been paid by the debtor already.

15. 11-25317-A-7 MOHAMMAD/SOUSAN MOTIEY TRUSTEE'S FINAL REPORT
2-1-16 [110]

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 chapter 7 trustee, Thomas Aceituno, has filed first and final motion for approval of compensation. The requested compensation consists of $12,320 in fees and $0.00 in expenses. The services for the sought compensation were provided from March 2, 2011 through the present. The sought compensation represents 19.6 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

Despite the total receipts in this case being $245,063.05, under a settlement agreement with the debtors, the estate is entitled solely to $181,402.85 of such receipts. The movant will make or has made the $181,402.85 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $12,320 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $6,570.14 (5% of the next $950,000 (or $131,402.85)). Hence, the requested trustee fees of $12,320 do not exceed the cap of section 326(a).

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."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) evaluating a pre-petition transfer of real property, (4) employing professionals to assist the estate in the

administration of an avoidance action, (5) communicating with the estate's counsel about various issues, (6) negotiating settlement of the action, (7) addressing tax issues, (8) overseeing enforcement of the avoidance action settlement, after default under the settlement by the debtors, (9) selling the property after it was transferred to the estate under the settlement agreement, (10) reviewing and analyzing claims, (11) preparing final report, and (12) preparing compensation motion.

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

16. 12-34317-A-7 JACK/SUSAN WHITE — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
CWC-3 — 2-15-16 [38]

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.

Carl Collins, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $7,266.44, reduced from $12,303.27 ($12,189 in fees and $114.27 in expenses). This motion covers the period from July 1, 2013 through November 5, 2015. The court approved the movant's employment as the trustee's attorney on August 1, 2013. In performing its services, the movant charged hourly rates of $90 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) analyzing and advising the trustee about the debtors' real property interests, (2) litigating adversary proceedings for the sale of co-owned property, (3) negotiating settlement of the litigation, (4) preparing the settlement agreement, (5) obtaining court approval of the settlement, 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.

17. 16-20235-A-7 JOSHUA PARROCHA
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-5-16 [13]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2007 Toyota Tacoma. The movant has produced evidence that the vehicle has a value of $16,650 and its secured claim is approximately $25,605. Docket 15.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on February 24, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

18. 09-20140-A-7 SHASTA REGIONAL MEDICAL
MPD-17 CENTER, L.L.C.

MOTION TO
DESTROY DEBTOR'S REMAINING
BUSINESS RECORDS AND TO PAY
2-10-16 [790]

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 asks for authority to destroy the estate's financial records, including the financial records that are being stored at the office of Michael Dacquisto, one of the estate's attorneys.

The court will permit the estate to destroy the financial records of the debtor, given that this case is nearly over.

The trustee also requests authority to pay a flat fee of $535 to Hemsted's Record Management and Shredding to destroy the 70 boxes of the records, as an administrative expense claim.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

The court will allow the estate to pay the proposed fee to Hemsted, to destroy the subject records. The court will authorize the payment to Hemsted pursuant to section 503(b)(1) and section 363(b), which permits the trustee to use property of the estate, including funds of the estate, other than the ordinary course of business.

19. 15-27842-A-7 ALBERT/JOAN BURNS — MOTION FOR DENIAL OF DISCHARGE 1-29-16 [13]
UST-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the 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 U.S. Trustee moves for denial of the debtors' discharge pursuant to 11 U.S.C. § 727(a)(8), which provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

An objection to discharge pursuant to section 727(a)(8) does not require an adversary proceeding. See Fed. R. Bankr. P. 7001(4).

The debtors filed a chapter 7 case, Case No. 12-33796, on July 27, 2012 and they received respective discharges in that case on November 13, 2012. The debtor filed the subject bankruptcy case, Case No. 15-27842, on October 6, 2015, approximately three and a quarter years after the filing of Case No. 12-33796. Dockets 15 & 16. As the debtors filed the instant bankruptcy case less than eight years after the filing of the bankruptcy case in which they received a discharge, they are not eligible to receive a discharge in the

instant bankruptcy case. Accordingly, the motion will be granted.

20. 15-29948-A-7 ELISHA/JOYCE MAY — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 2-8-16 [13]
SANTANDER CONSUMER USA, 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, Santander Consumer U.S.A., Inc., seeks relief from the automatic stay with respect to a 2003 Saturn Vue. The movant has produced evidence that the vehicle has a value of $4,225 and its secured claim is approximately $11,266. Docket 15.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on January 28, 2016. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

21. 16-20463-A-7 ANDREW/MELISSA HELBIG — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 2-11-16 [12]
BANK OF THE WEST VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of the West, seeks relief from the automatic stay as to a real property in Hanford, California. The property has a value of $145,000 and it is encumbered by claims totaling approximately $195,010. The movant's deed is in first priority position and secures a claim of approximately $165,850.

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 February 23, 2016. 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.

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.

22. 15-23173-A-7 MAY LEE
GMR-2

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
2-8-16 [43]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the 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 $1,971.50 in fees and $108.93 in expenses, for a total of $2,080.43. This motion covers the period from August 16, 2015 through February 6, 2016. The court approved the movant's employment as the estate's accountant on August 18, 2015. In performing its services, the movant charged hourly rates of $345 and $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.

23. 15-28378-A-7 WILLIAM/APRIL MELARKEY — MOTION TO DISMISS CASE 2-5-16 [18]
UST-1

Final Ruling: The hearing on this motion has been continued to March 28, 2016 at 10:00 a.m. Docket 26.

24. 14-20380-A-7 MILDRED PITTMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-5-16 [38]
APN-1
GATEWAY ONE LENDING AND 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 dismissed as moot.

The movant, Gateway Lending and Finance, seeks relief from the automatic stay with respect to a 2010 Honda Accord vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on January 15, 2014 as a chapter 13 proceeding. The case was converted to chapter 7 on January 25, 2016 and a meeting of creditors was first convened on March 2, 2016. Therefore, a statement of

intention that refers to the movant's property and debt was due no later than February 24, 2016. The debtor did not file a statement of intention by that date, however.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, the debtor has not filed a statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on February 24, 2016, 30 days after the conversion date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on March 3, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on February 24, 2016.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

25. 15-27689-A-7 WILLIE/PHYLLIS TAYLOR — MOTION TO AVOID JUDICIAL LIEN
MOH-1
VS. CITIBANK, N.A.
1-4-16 [15]

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

The motion will be granted.

A judgment was entered against the debtor Willie Taylor in favor of Citibank for the sum of $6,050.77 on May 20, 2013. The abstract of judgment was recorded with Butte County on June or July 18, 2013. That lien attached to the debtor's residential real property in Oroville, 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 $149,000 as of the petition date. Docket 21, Rushing Decl. The unavoidable liens totaled $126,774.94 on that same date, consisting of two mortgages in favor of Citimortgage, for $126,392.35 and $382.59, respectively. Docket 17. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $22,225.06 in Schedule C. Docket 17.

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).

26. 16-20591-A-7 ANTHONY/DELILAH SIMPSON — MOTION TO AVOID JUDICIAL LIEN
FF-1
VS. TARGET NATIONAL BANK — 2-10-16 [11]

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

The motion will be granted.

A judgment was entered against the debtor Delilah Simpson in favor of Target National Bank for the sum of $7,080.43 March 4, 2013. The abstract of judgment was recorded with Sacramento County on December 8, 2013. 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 $162,878 as of the petition date. Dockets 13 & 14. The unavoidable liens totaled $105,833.45 on that same date, consisting of a single mortgage in favor of Ocwen. Dockets 13 & 14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $57,044.55 in Amended Schedule C. Dockets 13 & 14.

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).

27. 16-20298-A-7 CONNIE MYERS — MOTION TO COMPEL ABANDONMENT
FF-1 — 2-3-16 [17]

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

The motion will be granted.

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

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

The debtor has produced evidence that the value of the property is $72,500. Docket 19. The property is encumbered by a single deed of trust in favor of First Mortgage Company in the amount of $59,388.76. The debtor has exempted $13,111.24 in the property pursuant to Cal. Civ. Proc. Code § 703.140(b)(1).

Given the property's value, encumbrances and exemptions, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

28. 16-20298-A-7 CONNIE MYERS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 2-3-16 [11]
NATIONSTAR MORTGAGE, L.L.C. VS.

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

The motion will be granted.

The movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of $130,748 and it is encumbered by claims totaling approximately $176,936. The movant's deed is in first priority position and secures a claim of approximately $126,607.

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.

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.

29. 16-20099-A-7 DP AQUATICS, INC. MOTION FOR
FLP-1 RELIEF FROM AUTOMATIC STAY
KAREN DAVIS VS. 2-10-16 [8]

Final Ruling: The motion will be dismissed without prejudice because the debtor was not served with the motion papers. Only counsel for the debtor was served. Docket 11.

Fed. R. Bankr. P. 9014(b) provides that a motion must be served in the manner provided for service of a summons and a complaint.

Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail.

Fed. R. Bankr. P. 7004(b)(9) provides that service "[u]pon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, [may be made] by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Also, Rule 7004(g) says that "[i]f the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F.R.Civ.P." But, nothing in Fed. R. Bankr. P. 7004 permits service on the debtor's attorney to the exclusion of the debtor.