UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 14, 2015 at 10:00 a.m.

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

3, 6, 7

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. **THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 13, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 28, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 5, 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. 15-20611-A-7 JASON/JENNIFER HILL — MOTION TO COMPEL ABANDONMENT
AFL-1 — 7-31-15 [15]

Tentative Ruling: The motion will be denied without prejudice.

The debtors seek to compel the trustee to abandon the estate's interest in a real property in Mountain House, California. The debtors assert that the value of the property is $446,000, whereas it is subject to a mortgage for $331,688 in favor of MB Financial, N.A. and an exemption claim for $100,000.

The trustee opposes the motion, seeking additional time to inspect the property and better determine its value. He needs more time to assess whether the property can be administered for the benefit of the estate. The trustee has proffered evidence from a real estate broker, that the value of the property is between $443,000 and $488,000, depending on the property's interior condition. Docket 18.

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.

As the trustee needs additional time to assess the value of the property to the estate, the motion will be denied without prejudice.

2. 14-30320-A-7 PETER WOLK — MOTION TO SELL
DLO-3 — 7-23-15 [93]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from August 31, 2015 in order for the movant to supplement the record. The trustee has filed additional papers in support of the motion. Docket 107.

The chapter 7 trustee requests authority to sell for $80,000 the estate's unencumbered interest in Northstate Medical Center Associates, L.L.C. (28.9485%) (scheduled value of $150,000), Amanda Place Investors Limited Partnership (0.5155%) (scheduled value of $20,620) and The Courtyard at Little Chico Creek, L.L.C. (1%) (scheduled value of $24,000), to the debtor.

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

The trustee "attempted to market and sell" the estate's interest in the entities, but without success. Docket 107 at 2. Thus, although the debtor has scheduled the aggregate value of his interests in all three entities at $194,620, the proposed purchase price of $80,000 is fair and reasonable, given the trustee's inability to attract other offers. This is not uncommon when fractional interests in fictitious entities are involved.

The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

By granting this motion, the court is not approving any agreement between the estate and the debtor. This motion seeks approval only of the subject sale.

3. 14-30320-A-7 PETER WOLK — MOTION TO ABANDON
DLO-4 — 8-13-15 [96]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Gualala, California. The property is over-encumbered.

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

The property has a value not exceeding $850,000 (Docket 107 at 2-3), whereas its encumbrances total approximately $1,082,000, consisting of a mortgage for $636,000 in favor of Citibank (Docket 98 at 2), a mortgage for $246,000 in favor of Tri Counties Bank (Docket 98 at 2), and a mortgage for $200,000 in favor of Andrew and Gail Wolk (Docket 12, Schedule D). Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

By granting this motion, the court is not approving any agreements between the estate and the debtor. This motion seeks only abandonment of the subject property.

4. 13-33226-A-7 ROY VESSELS — MOTION TO SELL
SLC-2 — 8-21-15 [20]

Tentative Ruling: The motion will be denied.

The trustee seeks to sell a commercial real property in Citrus Heights, California, housing an automotive repair shop, to Ali Golshani, Maryam Golshani, Mehrab Golshani "or Assignee" for $260,000. The estate owns only a 50% interest in the property. The property is subject to a mortgage of approximately $166,619 in favor of First Northern Bank of Dixon.

The motion will be denied. The motion does not identify the co-owner of the property and the court cannot tell whether the co-owner has been served with the motion.

Further, as the trustee is seeking to sell the entire property, including the

co-owner's interest in the property, the trustee has invoked 11 U.S.C. § 363(h). But, Fed. R. Bankr. P. 7001(3) requires an adversary proceeding for sales under section 363(h). The court cannot grant such relief on a motion.

Additionally, the court does not have evidence of: whether and to what extent the trustee has marketed the property; and what would be the tax consequences to the estate, if any, of such a sale.

The motion will be denied.

5.	09-20140-A-7 KJH-2	SHASTA REGIONAL MEDICAL CENTER, L.L.C.	MOTION FOR ADMINISTRATIVE EXPENSES 8-10-15 [755]

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

The National Labor Relations Board seeks allowance of administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii) and § 507(a)(2) for post-petition wages awarded as back pay pursuant to a decision and order of the Board.

The debtor laid off all its employees and ceased operations on or about October 31, 2008. The instant case was initiated by the filing of an involuntary petition on January 6, 2009. The order for relief was entered on February 3, 2009. On August 24, 2009, the NLRB issued a decision and order against the debtor, determining that it had violated sections 8(a)(5) and (1) of the National Labor Relations Act by failing to pay its employees contractual severance payments and by ceasing operations without bargaining with labor unions representing three distinct units of affected employees.

The NLRB required the payment of the contractually-required severance payments with interest and required the payment of back pay with interest. The NLRB filed a $1.3 million priority proof of claim in this case, consistent with the decision and order, on September 4, 2009. POC 213. Although the proof of claim includes both the unpaid severance pay and the unpaid back pay, this motion pertains only to the back pay.

Only the back pay portion of NLRB's claim is entitled to administrative priority under sections 503(b)(1)(A)(ii) and 507(a)(2). The severance pay is entitled to priority only under section 507(a)(4).

"For purposes of resolving this application without additional litigation, the NLRB accepts that this application, if granted, will be subordinate to administrative fees, claims, and expenses already paid to date. The NLRB further understands that this application, if granted, will be subordinate to administrative fees, claims, and expenses to be awarded to the trustee and the estate's hired professionals, and if funds are unavailable to pay the full amount claimed, the amount paid will be limited to whatever available funds remain in the estate."

Docket 755 at 5.

The trustee has filed a response, confirming NLRB's payment agreement expressed in the above paragraph and confirming the non-opposition of SEIU Healthcare Workers West, which filed its own $1.108 million priority proof of claim, which overlaps only with the severance portion of NLRB's claim, based on section 507(a)(4) priority and not 507(a)(2) priority. POC 236; Docket 761.

11 U.S.C. § 503(b)(1)(A)(ii) and § 507(a)(2) provide 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 including—*

"*(i) wages, salaries, and commissions for services rendered after the commencement of the case; and*

"*(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title.*"

Under 11 U.S.C. § 507(a)(2):

"*(a) The following expenses and claims have priority in the following order:*

"*(1) First . . .*

"*(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), [1] and any fees and charges assessed against the estate under chapter 123 of title 28.*"

As the back pay in question is attributable to a period that started on August 29, 2009, nearly eight months after the January 6, 2009 petition date and nearly seven months after the February 3, 2009 order for relief date, the back pay is entitled to the administrative priority envisioned by sections 503(b)(1)(A)(ii) and 507(a)(2). The requested back pay portion of NLRB's decision and order amounts to $713,395.20, which excludes interest and it is based on conservative assumptions (lowest rate of pay for all employees and up to full-time basis of 40 hours per week) as the NLRB had no information about pay rates and actual hours worked.

Given the foregoing, the motion will be granted. The requested payment shall be subject to the terms outlined in the last paragraph of the motion (Docket 755 at 5).

6.	15-26546-A-7 BRANDON/RAELENNE FAIMAN RWD-1 LAURIE BROUGHAN VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-31-15 [15]

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, Laurie Broughan, seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtors leased it from the movant. The debtors defaulted under the lease agreement in June 2015. The movant served the debtors with a three-day notice to pay or quit on June 9, 2015. After expiration of the notice, the movant filed an unlawful detainer action against the debtors on June 29, 2015. At trial, on August 11, 2015, a judgment for possession was entered in favor of the movant. The debtors were served with the writ of possession on August 14, 2015. The debtors filed this bankruptcy case on August 18, 2015.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay the rent due from June 2015 onward. Also, the debtors' tenancy interest in the property terminated upon expiration of the three-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This 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) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be 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.

7. 13-29754-A-7 TIMOTHY/SHAWN POLI — OBJECTION TO CLAIM
MET-4
VS. MIDLAND CREDIT MANAGEMENT, INC. — 8-4-15 [91]

Tentative Ruling: This objection to a proof of claim has been set for hearing on less than 44 but more than 30 days notice to the claimant, as required by Local Bankruptcy Rule 3007-1(b)(2). If the claimant appears at the hearing and offers opposition to the objection, 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 dispose of the matter based on the record as developed.

The objection will be sustained.

The debtors object to POC 4, the $3,332.26 general unsecured claim of Midland Credit Management, Inc., as agent for Asset Acceptance, L.L.C., arguing that under the four-year statute of limitations of Cal. Civ. Proc. Code § 337, Midland is prohibited from collecting on the debtor's account.

Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in his individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004).

The debtors have standing to prosecute this claim objection as this is a surplus estate. The estate is holding approximately $144,781, whereas the claims against the estate, including administrative claims, total approximately $106,400.

Cal. Civ. Proc. Code § 337(2) prescribes a four-year statute of limitations for the recovery on an account stated: "*Within four years. . . . An action to recover* (1) upon a book account whether consisting of one or more entries; (2) *upon an account stated based upon an account in writing*, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and *where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item*."

The subject proof of claim is based on an account stated with the original creditor, Bank of America, containing multiple items. The date of the last item transaction on the account is identified as February 26, 1986.

The filing of the instant proof of claim is an action for the recovery on the debtors' account stated, making the four-year statute of limitations applicable here.

The four-year statute of limitations under section 337 expired in February 1990, four years after the last transaction on the account. POC 4-1. This case was not filed until July 24, 2013. See also 11 U.S.C. § 108(c) (tolling nonbankruptcy statute of limitations if not expired prior to the petition filing date). As such, the time for instituting an action for the recovery on the account expired over 23 years before this case was filed. Thus, section 337 prohibits Midland from recovering on the account. Accordingly, the subject proof of claim will be disallowed.

8. 15-23876-A-7 RUBEN REYNOSO — MOTION TO AUTHORIZE SALE, EMPLOY AND PAY WEST AUCTIONS, INC. 8-17-15 [32]
PA-5

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

The chapter 7 trustee requests authority to sell at an online auction, with

West Auctions, Inc., a 2005 Ford F250 and four snowmobile vehicles, various farming equipment and "[m]iscellaneous personal property[] which may have not been scheduled by the Debtor." Docket 32 at 2. The trustee is unaware of any encumbrances against the identified assets. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The trustee also asks for approval of West's employment as auctioneer for the estate and for payment of West's compensation, in connection with this sale, without further order of the court. West's proposed compensation is a 20% commission on the gross sale proceeds plus reimbursement of expenses for the securing, transporting and storing of the assets, in addition to vehicle document processing fees up to $600.

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

First, the court cannot approve the sale of unidentified property as it cannot be certain that the sale of such property is in the best interest of the creditors. The trustee's request to sell undisclosed property deprives the court of information about the value of such property, the marketability of such property and encumbrances, if any, on such property, thus preventing the court from determining whether such a sale would be in the best interest of the creditors.

Second, the court cannot approve the sale of the vehicles and farming equipment for the same reason. While the motion states that these assets are unencumbered, the motion mentions that the assets are subject to exemptions. Yet, the trustee does not disclose the exemption amounts and does not provide information about the anticipated proceeds from the sale of the vehicles and equipment, preventing the court from assessing whether their sale would be in the best interest of the creditors.

The trustee's statements about the sale generating sufficient funds to pay off the exemptions are unhelpful, as the court does not have the underlying information for such a conclusion. Even if the debtor has undervalued the equipment by approximately 300% - as argued by the trustee, this tells nothing to the court about whether its sale would be in the best interest of the creditors, as the motion gives no value to such equipment.

For example, if the equipment has a scheduled value of $500 and it is subject to a $500 exemption, generating $1,500 from its sale would obviously pay off the exemption amount, but it would not be in the best interest of the creditors, as the estate is spending several thousand dollars already on this motion alone.

In short, the motion does not identify how much in net proceeds the estate is anticipating to realize from the sale. As such, the court cannot determine if the sale is in the best interest of the creditors.

Second, even if it were to approve the sale of the vehicles and equipment, the court cannot approve the sale free and clear of unidentified liens. The

trustee admits to having found no encumbrances on the vehicles and equipment. Section 363(f) requires the court to know the liens as to which it is applying the different subsections of that provision.

For instance, section 363(f)(3) requires that "the proposed purchase price exceeds the aggregate value of the liens encumbering the property." The court cannot determine whether the purchase price exceeds the lien amount unless it knows what is the lien amount. Section 363(f) requires a bona fide dispute. The court cannot know what is the trustee's dispute of the lien - much less whether the dispute is indeed a bona fide one, unless it knows the unique circumstances giving rise to the disputed particular lien.

Finally, although the court will approve West's employment as auctioneer for the estate, West's compensation will be denied without prejudice as the court is not approving the sale. The motion will be granted in part and denied in part.

9. 15-25988-A-7 HASNTI CHATMAN — MOTION FOR
ADR-1 — RELIEF FROM AUTOMATIC STAY
TECHRESORT, L.L.C. VS. — 8-20-15 [14]

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, Techresort, L.L.C., seeks relief from the automatic stay as to real property in Stockton, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in July 2015. The movant served the debtor with a three-day notice to pay or quit on July 12, 2015. The debtor filed this bankruptcy case on July 29, 2015.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, the debtor has defaulted under the lease agreement by failing to pay the rent due from July 2015 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This 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) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be 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.

10. 14-31890-A-11 SHAINA LISNAWATI — STATUS CONFERENCE 12-6-14 [1]

Tentative Ruling: None.

THE FINAL RULINGS BEGIN HERE

11. 15-23101-A-7 GREGG/KAREN RAMPENTHAL — MOTION TO AVOID JUDICIAL LIEN
MOH-1
VS. DISCOVER BANK — 8-10-15 [20]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Discover Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the creditor. It was addressed to CT Corporation System, "Designated Agent for Discover." Docket 24. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

Further, while the debtor served Discover's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

12. 13-33618-A-7 CAROLE BAIRD — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
DNL-13 — 8-17-15 [187]

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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $15,300.06 in fees (reduced from $51,583 in fees) and $1,199.94 in expenses, for a total of $16,500. This motion covers the period from November 15, 2013 through August 11, 2015. The court approved the movant's employment as the trustee's attorney on December 6, 2013. In performing its services, the movant charged hourly rates of $50, $150, $175, $195, $275 and $400.

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) reviewing assets, (2) investigating undisclosed assets, (3) advising the trustee about the administration of real property and business assets, (4) responding to a stay relief motion, (5) negotiating and preparing stipulations for extension of the deadline for filing discharge objections, (6) preparing and prosecuting an abandonment motion, (7) assisting the trustee with the sale of estate assets, (8) analyzing the estate's interest in a partnership, (9) preparing and prosecuting a motion for turnover, (10) negotiating and seeking court approval of a settlement involving one of the debtor's real properties, (11) preparing and prosecuting a denial of discharge adversary complaint, (12) enforcing a money judgment against the debtor, (13) preparing and prosecuting a motion for the assignment of the debtor's right to payment, and (14) 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.

13. 15-25427-A-7 MATTHEW MAIN — MOTION TO AVOID JUDICIAL LIEN
HLG-1
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 8-14-15 [13]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Portfolio Recovery Associates, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 17.

Although the motion were served to the attention of an "Officer," they were not served on Portfolio Recovery Associates, L.L.C. They were served on Hunt & Henriquez, counsel for Portfolio. But, unless counsel agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 17.

14. 10-20029-A-7 BUALAI WHITE — MOTION TO APPROVE COMPENSATION OF TRUSTEE
SMD-5 — 8-8-15 [254]

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, Susan Didriksen, has filed first and final motion for approval of compensation. The requested compensation consists of $16,996.39 in fees and $407.65 in expenses, for a total of $17,404.04. The services for the sought compensation were provided from January 3, 2013 through June 26, 2015. The sought compensation represents 73.9 hours of services.

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

The movant will make or has made $274,927.71 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $16,996.39 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $11,246.39 (5% of the next $950,000 (or $224,927.71)). Hence, the requested trustee fees of $16,996.39 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 L.L.C. (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) employing professionals to assist the estate in the administration of estate assets, (4) selling real property of the estate, (5) addressing numerous sales issues, such as reviewing offers, title reports, insurance information and communicating with the estate's realtor, (6) communicating with the estate's counsel and accountant about various issues, (7) reviewing and analyzing claims, (8) addressing tax issues, (9) preparing final report, and (10) 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.

15. 15-25945-A-7 DEBRA CAMPBELL — MOTION TO AVOID JUDICIAL LIEN
SDB-1
VS. LVNV FUNDING, L.L.C. — 8-6-15 [9]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent, LVNV Funding, L.L.C. Docket 14. Although the motion were served on LVNV's counsel, Hunt & Henriquez, unless counsel agreed to accept service, service was improper. See, e.g., Beneficial California,

Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Docket 17.

16. 15-26245-A-7 DENNIS BRUGMAN — ORDER TO SHOW CAUSE 8-19-15 [11]

Final Ruling: The order to show cause will be discharged as moot 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 August 28, 2015, the court entered an order waiving payment of the debtor's filing fee, rendering this order to show cause moot. Docket 15.

17. 15-23852-A-7 ALBERT/IRENE ORTIZ — MOTION TO CONVERT OR TO DISMISS CASE 8-13-15 [14]
UST-2

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 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 seeks dismissal of this case under 11 U.S.C. § 707(b)(2), contending that there is a presumption of abuse. In the alternative, the motion asks for dismissal under the abuse standard of 11 U.S.C. § 707(b)(3).

The motion also asks for conversion to chapter 13, in the event the debtors consent.

11 U.S.C. § 707(b)(1) provides that, after notice and a hearing, on its own motion or on a motion by the U.S. Trustee, the court may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it concludes that the granting of chapter 7 relief would be an abuse of the chapter 7 provisions.

A presumption of abuse exists under 11 U.S.C. § 707(b)(2)(A) when a debtor's current monthly income, reduced by the amounts permitted by subsections (ii), (iii), and (iv) of 11 U.S.C. § 707(b)(2)(A), and multiplied by 60, is no less than the lesser of 25% of the debtor's non-priority unsecured claims or $7,475, whichever is greater, or $12,475. See 11 U.S.C. § 707(b)(2)(A)(i), as amended by 78 F.R. 12089.

In other words, if after deducting all allowable expenses from a debtor's current monthly income, the debtor has less than $124.58 in net monthly income (*i.e.*, less than $7,475 to fund a 60 month plan), a chapter 7 petition is not presumed abusive. If the debtor has monthly income of more than $207.92 (or

$12,475) to fund a 60-month plan, a chapter 7 petition is presumed abusive. And, if the debtor has between $124.58 and $207.92 of monthly disposable income, a presumption of abuse exists if that sum, when multiplied by 60 months, will pay 25% or more of the debtor's non-priority unsecured debts.

Under section 707(b)(2)(B):

"*(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.*

"*(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide--*

"*(I) documentation for such expense or adjustment to income; and*

"*(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.*

"*(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.*

"*(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of--*

"*(I) 25 percent of the debtor's nonpriority unsecured claims, or $7,4751, whichever is greater; or*

"*(II) $12,4751.*"

Consumer debts are defined as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). "[A] debtor is considered to have "primarily consumer debts" under § 707(b) when consumer debts constitute more than half of the total debt." Price v. United States Trustee (In re Price), 353 F.3d 1135, 1139 (9th Cir. 2004).

The debtors have admitted to the presumption of abuse in their means test form. Docket 1 at 57. Although they have listed some special circumstances in their means test form (Docket 1 at 58), their response to this motion does not itemize any special circumstances, as required by section 707(b)(2)(B)(ii), nor does it attempt to rebut the presumption of abuse.

Moreover, the debtors' response states their non-opposition to dismissal of the case. Docket 24. Given this, the motion will be granted under section 707(b)(2). As the debtors do not consent to conversion, the case will be dismissed.

18. 14-32353-A-7 JAMES/EMILY ANDERSON
NLG-1
SETERUS, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-5-15 [34]

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

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

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Queen Creek, Arizona.

Given the entry of the debtor's discharge on April 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 $205,000 and it is encumbered by claims totaling approximately $238,413. 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 non-opposition to this motion.

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

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.

19. 09-43758-A-7 FAIZA HAMID
LBG-3
VS. ELKHORN PLAZA SHOPPING CENTER, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
8-11-15 [22]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Elkhorn Plaza Shopping Center, L.L.C. for the sum of $187,390.45 on May 20, 2009. The abstract of judgment was recorded with Sacramento County on July 2, 2009. That lien attached to the debtor's residential real property in Antelope, 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 $247,500 as of the petition date. Dockets 24 & 25. The unavoidable liens totaled $240,333 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 24 & 25. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $7,167 in Schedule C. Dockets 24 & 25.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

20. 15-23858-A-7 FRANCISCO GALEANA — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 8-14-15 [14]
THE BANK OF NEW YORK MELLON VS.

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

The motion will be granted.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of $117,403 and it is encumbered by claims totaling approximately $152,986. 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 August 11, 2015.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession

of the subject property following sale. No other relief is awarded.

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

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

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

21. 15-25558-A-7 LUIS/RAQUEL MEDINA — MOTION FOR DENIAL OF DISCHARGE
UST-1 — 8-7-15 [13]

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 debtor filed a chapter 7 case, Case No. 11-36652, on July 6, 2011 and they received a discharge in that case on November 16, 2011. The debtors filed the subject bankruptcy case, Case No. 15-25558, on July 13, 2015, approximately four years after the filing of Case No. 11-36652. Docket 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.

The court also notes that the debtors have filed a non-opposition to this motion.

Accordingly, the motion will be granted.

22. 15-25061-A-7 ERIC JACKSON
APN-1
WELLS FARGO BANK VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-6-15 [14]

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 Jeep Commander. The movant has produced evidence that the vehicle has a value of $11,050 and its secured claim is approximately $11,879. Docket 16.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on August 5, 2015. 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.

23. 15-24563-A-7 AMANDEEP SINGH
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-14-15 [12]

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

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

The motion will be dismissed as moot.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2008 Mercedes Benz E-Class 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 June 4, 2015 and a meeting of creditors was first convened on July 1, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 1. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. 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 July 1, 2015, the date of the initial 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. The court also notes that the trustee filed a "no-asset" report on July 3, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 1, 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.

24. 15-25367-A-7 DEBORAH FOWLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
WELLS FARGO BANK, N.A. VS.
8-5-15 [11]

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Grass Valley, California. The property has a value of $220,000 and it is encumbered by claims totaling approximately $329,435. 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 August 11, 2015.

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

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

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

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

25. 14-27474-A-7 BRENT/ANGELINA WARD
HCS-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-17-15 [57]

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,750 in fees and expenses, reduced from $1,795 in fees and $30.11 in expenses. This motion covers the period from September 24, 2014 through the present. The court approved the movant's employment as the trustee's attorney on September 26, 2014. In performing its services, the movant charged hourly rates of $90, $225, $250, $295 and $315.

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) reviewing and analyzing estate assets, (2) negotiating and preparing three stipulations for extension of time to file discharge objections, (3) negotiating the sale of shares in an S corporation back to the debtor, and (4) preparing and filing employment and compensation motions.

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

26. 15-22384-A-7 YER HER
MDE-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-14-15 [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 dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2010 Toyota RAV4 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 March 26, 2015 and a meeting of creditors was first convened on May 4, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 25. The debtor did not file a statement of intention until April 30. Docket 12.

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, it was not filed until April 30. Thus, the statement of intention is untimely. 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 April 25, 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 April 25, 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.

27. 15-22685-A-7 KARL PETERSON AND ULRIKE LESK
PPR-1 BANK OF AMERICA, N.A. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
8-12-15 [23]

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

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

The movant, Bank of America, seeks relief from the automatic stay with respect to a 2008 Audi S6. In the statement of intention, the vehicle is identified as a 2010 Audi.

Given the entry of the debtor's discharge on July 13, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant has produced evidence that the vehicle has a value of $16,875 and its secured claim is approximately $27,863. Docket 25.

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 trustee has filed a non-opposition to the motion.

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

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

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