UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 23, 2017 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar: 1, 3, 4, 8, 9,

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 NOVEMBER 20, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 6, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 13, 2017. 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.

1. 16-21112-A-7 KENDALL BROOKS
DNL-14

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-2-17 [113]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee on behalf of West Auctions, Inc., 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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $17,175.00 in fees and $408.59 in expenses, for a total of $17,583.59. This motion covers the period from March 30, 2016 through October 2, 2017. The court approved the movant's employment as the trustee's attorney on April 20, 2016. In performing its services, the movant charged hourly rates of $225, $325 and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the sale of real property; (2) reviewing schedules and other petition documents, (3) investigating and drafting a settlement agreement resolving all claims with regard to the estate's interest in earnings, homestead proceeds, and life insurance, 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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

2. 15-29917-A-7 PAUL/TINA FARROW
HSM-2

MOTION TO APPROVE COMPROMISE
9-22-17 [28]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Foster Dairy Farms, Inc. (d.b.a. Crystal Creamery), resolving preference claims pertaining to transfers made by the debtors within 90 days of the petition date. The transfers of which the trustee is aware total $25,000.

Under the terms of the compromise, Foster will pay a $5,000 deposit to the

trustee. The motion says that Foster will pay $16,000 as consideration in exchange for a general release of the estate's claims against the Foster.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the relatively small amount at stake, given that the settlement payment ($16,000) is about two-thirds of the amount at stake ($25,000), given Foster's potential new value defenses, and given the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

The court will also approve the transaction as a sale.

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

Given Foster's potential new value defense and given the inherent costs, risks, delay, and inconvenience of further litigation of the claims, their sale for $16,000 is in the best interest of the creditors and the estate.

The motion will be granted.

3. 16-26321-A-7 FELICIA GUIDRY — MOTION TO APPROVE EMPLOYMENT OF SPECIAL COUNSEL
SSA-1 — 9-13-17 [22]

Tentative Ruling: The motion will be granted.

The trustee seeks approval to employ Joshua Watson of the Arnold Law Firm, P.L.C. as special counsel for the estate to prosecute personal injury/product liability/medical device claims. The debtors employed the Arnold Law Firm pre-petition. The proposed compensation arrangement is a contingency fee of 40% of the gross recovery from settlement prior to scheduling the case for arbitration or trial and 45% of the gross recovery after that date (whether by settlement, arbitration, or trial). In calculating the special counsel's compensation, fees will be deducted from gross recovery first and then advanced costs will be deducted.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and

[must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. The Arnold Law Firm is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. Accordingly, the motion will be granted.

4. 15-27322-A-7 WILLIAM MYER — MOTION TO APPROVE COMPENSATION OF AUCTIONEER
DNL-9 — 10-2-17 [132]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee on behalf of West Auctions, Inc., 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.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,318.00 in fees and $1,727.70 in expenses, for a total of $5,045.70. This motion is for a sale completed on September 5-7, 2017. The court approved the movant's employment as the trustee's auctioneer on August 15, 2017. The requested compensation is based on a 12% commission and reimbursement of transportation, storage, and document preparation expenses.

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 sale of several vehicles and a trailer.

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

5. 17-25324-A-7 JOHN SHINN — TRUSTEE'S MOTION TO DISMISS CASE
MPD-1 — 9-20-17 [15]

Tentative Ruling: The motion will be conditionally denied.

The trustee moves for dismissal because the debtor did not attend the meeting of creditors held on September 20, 2017.

The debtor responds that he did not receive the notice for the September 20 meeting.

The meeting was continued to October 18, 2017 at 2:00 p.m. in Redding,

California. The court will not dismiss the case if the trustee confirms the debtor appeared at the continued meeting.

As the debtor obviously received the notice of this motion, the debtor must have also received the notice of the October 18 continued creditors' meeting. See Docket 15 (containing the motion to dismiss and the notice of the October 18 meeting).

The notice to the original meeting of creditors was sent to the address provided by the debtor on the petition documents, *18615 Del Norte Dr, Cottonwood, CA 96022-8589*. See Docket 1 at 2; Docket 11. The notice was sent to that address and was not returned. The notice is then presumed to have been received by the debtor. The court also notes that the address where the notice of the original meeting was sent is the same as the address where this dismissal motion was noticed. See Docket 17. And the debtor obviously received the notice of this motion.

If the case is not dismissed, the deadlines for filing complaints under 11 U.S.C. §§ 523 and 727 and motions to dismiss under 11 U.S.C. § 707 ill be continued to December 17.

6. 16-28443-A-7 SCOTT TIBBEDEAUX — MOTION TO DISMISS
17-2061
ALTMANN V. TIBBEDEAUX ET AL — 7-14-17 [44]

Tentative Ruling: The motion will be granted.

The defendant, Scott Tibbedeaux, seeks dismissal of the second amended complaint filed on August 5, 2017 by the plaintiff, Ernest Altman.

As a preliminary matter, the court incorporates by reference its ruling on the motion to dismiss made on September 5, 2017. Docket 36.

At the hearing on September 5, 2017, the court ruled that the second amended complaint failed to state a claim under Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b). Docket 36. At the plaintiff's request, the court continued the hearing to October 23, 2017 to allow the plaintiff time to file a response and attach a proposed amended third complaint. The plaintiff represented that he had retained an attorney to assist him. The court granted the continuance and required a response and a proposed third amended complaint no later than October 9, 2017.

On October 10, 2017, one day after the deadline, the plaintiff filed a response that included a proposed amended third complaint. Docket 61. The proposed complaint was drafted by the plaintiff, not an attorney.

In the proposed complaint, the plaintiff objects to the defendant's discharge pursuant to 11 U.S.C. § 727(a)(4)(A); asserts that his claim is made nondischargeable by 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6); and seeks damages in the amount of $645,000.

The proposed complaint does not pass muster under Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b).

Rule 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F.

Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"*To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'*"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

The Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"*First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'*

"*In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.*"

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

The proposed third amended complaint includes no factual allegations as each claim for relief. Rather, the plausibility of the claims rests solely on the factual allegation that "Plaintiff retained Defendant based on the attorney's representation that Rushmore could not foreclose on the property based on his

research of legal authorities." Docket 61 at ¶ 11. The complaint does not proffer facts to indicate that such representation was willful and malicious or intentionally false. The complaint merely concludes that the representation was fraudulent.

The facts alleged in the proposed complaint do not establish facial plausibility for liability under 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). Accordingly, the plaintiff will not be given leave to amend the second amended complaint. The motion to dismiss will be granted for the reasons set forth in the court's ruling made on September 5, 2017. Docket 36.

7. 16-28443-A-7 SCOTT TIBBEDEAUX — STATUS CONFERENCE
17-2061 — 7-24-17 [48]
ALTMANN V. TIBBEDEAUX ET AL

Tentative Ruling: None.

8. 17-25376-A-7 STACY MOSS — MOTION FOR
EJS-1 — RELIEF FROM AUTOMATIC STAY
VICTOR VANDENBERGHE VS. — 10-6-17 [21]

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, Victor Vandenberghe, 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 debtor defaulted under the lease agreement in August 2017. The movant served the debtor with a three-day notice to pay or quit on August 4, 2017. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on August 9, 2017. The debtor filed a chapter 7 petition on August 14, 2017.

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 debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay the rent due from August 2017 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, 1470 (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.

9. 17-25784-A-7 FLOREGAY GARCIA
SW-1
A-L FINANCIAL CORPORATION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-9-17 [16]

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, A-L Financial Corp, seeks relief from the automatic stay with respect to a 2013 Chevrolet Malibu. The vehicle has a value of $8,910 and its secured claim is approximately $12,262.

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 September 25, 2017. Further, the debtor has not made three pre-petition and one post-petition payments to the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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.

10. 16-23886-A-7 NORMAN WEGARD
MDA-2

MOTION TO
APPOINT PERSONAL REPRESENTATIVE
10-2-17 [50]

Tentative Ruling: The motion will be dismissed.

The attorney for the debtor moves for an order allowing substitution of Linda Wegard, sister of the debtor, as the representative for the deceased debtor, Norman Barry Wegard. Notice of the death of the debtor was filed on April 25, 2017. Docket 19.

Service of the motion is defective. It was not served on creditors 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) 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 solely to an officers of creditors including but not limited to Discover Bank and Bank of the West. It was not addressed to any officer of these creditors. Docket 54. 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").

On the merits, the court is aware of no authority permitting it to name a representative for the debtor who has died.

Fed. R. Bankr. P. 1004.1 permits the bankruptcy court to appoint a guardian ad litem for a minor or incompetent person. This rule does not permit the court to appoint a representative for a deceased debtor.

Fed. R. Bankr. P. 1016 provides that when a chapter 7 debtor dies or becomes incompetent the case will not be dismissed if case can nonetheless be concluded. The rule includes no authority to appoint a representative for the debtor.

When a party dies, Fed. R. Bankr. P. 7025 allows the substitution of a representative, such as the executor or administrator of their probate estate or a successor. It does not, however, permit the bankruptcy court to name the representative. This would presumably be done by the state court in which the probate case was pending.

11. 16-23886-A-7 NORMAN WEGARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
MEL-1 — 9-18-17 [41]
BANK OF AMERICA, N.A. VS.

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

The movant, Bank of America, seeks relief from the automatic stay as to real property in Placerville, California.

Given the entry of the debtor's discharge on October 3, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $337,065 and it is encumbered by claims totaling approximately $313,549. The movant's deed is in first priority position and secures a claim of approximately $213,793. This leaves approximately $23,515 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant also has an equity cushion of approximately $123,272. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee completes administration of the estate. The trustee has issued a notice of assets. The motion will be denied as to the estate.

12. 17-24195-A-7 GOHAR ASLANYAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
JWC-1 — 7-31-17 [14]
TRANSPORT FUNDING, L.L.C. VS.

Tentative Ruling: The motion will be granted in part.

The movant, Transport Funding, L.L.C., seeks relief from the automatic stay to complete the prosecution of a state court collection action against the debtor.

The movant's predecessor in interest financed a purchase of a truck by the debtor's now deceased husband. After the debtor's husband passed away, the movant initiated the collection action against the debtor, and obtained in December 2016 a pre-judgment attachment lien against the debtor's real property in Carmichael, California by recording a notice of attachment with the Sacramento County Recorder's Office. On May 12, 2017, the state court granted a motion for summary judgment in favor of the movant. Before judgment could be entered, the debtor filed this case on June 26, 2017.

By this motion, the movant is seeking relief from stay in order to obtain the entry of judgment in the collection action. The movant also asks for a delay of entry of the bankruptcy discharge until the collection judgment is entered.

"Under California law, certain creditors may obtain a prejudgment writ of attachment against property of the debtor by establishing the probable validity of their claims. See Cal. Civ. Proc. Code §§ 484.090, 485.220, 486.020. An attachment lien is created when the creditor files a notice of attachment or otherwise levies on the property. See Cal. Civ. Proc. Code § 488.500(a). This lien has priority over subsequent liens. See Cal. Civ. Proc. Code § 488.500(b). Unlike the holder of a security interest, however, the attachment creditor has no right to proceed against the property until after the creditor obtains a judgment. See Arcturus Mfg. Corp. v. Superior Court, 223 Cal. App. 2d 187, 35 Cal. Rptr. 502, 505 (1964). 'The attaching creditor obtains only a potential right or a contingent lien,' Puissegur v. Yarbrough, 29 Cal.2d 409, 175 P.2d 830, 831 (1946), which is perfected or converted to a judgment lien upon judgment for the creditor, Arcturus, 35 Cal.Rptr. at 505; cf. Cal. Prob. Code § 9304 (describing the procedure for converting an attachment lien into a judgment lien in the context of a probate action). The priority of the judgment lien relates back to the date of the attachment lien. Thus, an attachment lien acts as a placemarker, ensuring the creditor's spot in the priority line until the creditor can obtain judgment."

Diamant v. Kasparian (In re S. California Plastics, Inc.), 165 F.3d 1243, 1246 (9th Cir. 1999).

Section 362(d)(1) of the Bankruptcy Code provides in relevant part: "[o]n request of a third party in interest, and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause[.]" 11 U.S.C. § 362(d)(1). Courts have granted relief from the stay for cause when necessary to permit pending litigation to be concluded in another forum. See, e.g., In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990); In re Kemble, 776 F.2d 802, 807 (9th Cir. 1985).

The Bankruptcy Appellate Panel in the Ninth Circuit has identified non-exclusive factors to consider in determining whether cause exists for relief from the stay to be granted to allow litigation in a non-bankruptcy forum to continue, including considerations of judicial economy and the expertise of the state court, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved. In re Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer), 405 B.R. 915, 919 (9th Cir. B.A.P. 2009); Edwards v. Wells Fargo Bank, N.A., 454 B.R. 100, 106 (9th Cir. B.A.P. 2011).

The court finds that cause exists to grant relief from stay. The movant has a pre-petition prejudgment attachment lien against the debtor's real property. Also, summary judgment was granted in the movant's favor pre-petition. The movant is only a step away from removing the contingency on its prejudgment lien. The only remaining task for the state court are ministerial, the entry of a judgment and the issuance of an abstract of judgment.

Application of the *Curtis* factors weigh in favor of granting relief from stay for cause under section 362(d)(1).

Relief from stay will permit the complete the determination and liquidation of the movant's claim. The state court need only enter the judgement and issue an abstract of judgement to be recorded to perfect the movant's attachment lien.

Also, permitting the lender to perfect its judgment lien has no connection with the administration of the bankruptcy case nor will it cause any interference with it. The only tasks remaining are purely administrative – the entry of a judgment and issuance of an abstract of judgment.

Perfecting its judgment lien will not prejudice the interests of other creditors. The movant holds a pre-petition contingent lien which it now seeks to perfect. No priorities will be altered among creditors because the attachment lien was recorded outside of the preference period.

If the judgment is obtained and a judgment lien is recorded, the movant will have a judicial lien on the debtor's real property. To the extent that the debtor subsequently seeks to avoid the movant's judicial lien, in part or in whole, this court will then determine whether avoidance is appropriate under 11 U.S.C. § 522(f). It will not resolve the avoidability of the lien in connection with this motion.

For the forgoing reasons, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute claims against the debtor and enforce any judgment against the debtor's real property.

The court perceives no reason to delay the entry of a discharge.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

FINAL RULINGS BEGIN HERE

13. 10-36404-A-7 JACOB ENNI
CLH-2
VS. CENTRAL STATE CREDIT UNION

MOTION TO
AVOID JUDICIAL LIEN
9-20-17 [37]

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 Central State Credit Union for the sum of $11,368.45 on May 4, 2010. The abstract of judgment was recorded with San Joaquin County on May 24, 2010. That lien attached to the debtor's interest in a residential real property in Stockton, 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 $114,987 as of the petition date. Dockets 39 & 1. The unavoidable liens totaled $120,068 on that same date, consisting of a single mortgage in favor of PNC Mortgage. Dockets 39 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)&(5) in the amount of $1.00 in Amended Schedule C. Dockets 39 & 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).

14. 15-29917-A-7 PAUL/TINA FARROW
HSM-3

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
9-22-17 [33]

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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $13,332 in fees and $8.00 in expenses, for a total of $13,340.

The movant will voluntarily reduce its fees to the residual after the payment of the trustee's commission in full and priority taxes. The movant claims that there are no unsecured claims below the priority taxes.

This motion covers the period from February 3, 2016 through October 23, 2017. The court approved the movant's employment as the trustee's attorney on February 22, 2016. In performing its services, the movant charged hourly rates of $310, $320, 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 petition documents and analyzing estate assets, (2) reviewing documents pertaining to a loan from Foster Dairy Farms, Inc. and a deed encumbering the debtors' residence, (3) analyzing the debtors' pre-petition financial affairs, specifically relating to the sale of their business, (4) analyzing avoidable transfers, (5) litigating avoidable transfer claims against Foster, including preparing complaint (6) negotiating settlement over the claims, (7) preparing settlement agreement, (8) preparing and prosecuting motion to approve the settlement, (9) advising the trustee about the general administration of the estate, and (10) 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.

15. 17-24019-A-7 GARY SMITH — MOTION TO AVOID JUDICIAL LIEN
MMM-2
VS. CAVALRY INVESTMENTS, L.L.C. — 9-20-17 [58]

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 "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Cavalry Investments, 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 62.

And, while the debtor served Cavalry's attorney, unless the attorney agreed to accept service, service was improper. Docket 62; see, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

16. 17-25245-A-7 SHANDA LYON — ORDER TO SHOW CAUSE 9-27-17 [36]

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

This order to show cause was issued because the debtor filed Amended Schedules A/B, C, and D on September 13, 2017, but did not pay the $31 filing fee. However, the court granted the debtor's motion for waiver of the filing fee on August 11, 2017. Docket 11. The court also notes that the trustee opposes dismissal of the case, as it is an asset case.

17. 16-22654-A-7 MARC LIM
HSM-16 — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-25-17 [202]

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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $110,819.50 in fees (excluding a voluntary reduction of $5,000) and $3,174 in expenses, for a total of $113,993.50. This motion covers the period from May 10, 2016 through August 31, 2017. The court approved the movant's employment as the trustee's attorney on June 9, 2016. In performing its services, the movant charged hourly rates of $310, $320, 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) analyzing and advising the trustee about complex asset issues pertaining to the debtor's former business,

(2) reviewing and analyzing substantive and procedural issues related to a pending district court litigation,

(3) reviewing documents related to the debtor's dissolved corporation,

(4) reviewing documents of PACA interests and communicating with PACA creditors about asset administration,

(5) researching PACA issues,

(6) preparing for and appearing at the initial and continued meetings of creditors,

(7) communicating with the estate's accountant about the debtor's finances and assets,

(8) analyzing issues pertaining to various assets, such as vehicles, real property, and funds received on account of a marital settlement agreement,

(9) preparing and prosecuting asset abandonment motions,

(10) preparing and prosecuting motion for rejection of executory contracts,

(11) negotiating a buy-back agreement with the debtor,

(12) negotiating a settlement with the PACA creditors,

(13) preparing PACA creditor settlement agreement and motion to approve the settlement,

(14) prosecuting settlement approval motion,

(15) addressing various issues pertaining to the debtor's incapacity and then passing away,

(16) negotiating with the debtor's heirs about the buy-back agreement,

(17) assisting the trustee with the sale of the debtor's real property,

(18) researching issues relating to the debtor's exemption claims,

(19) appearing at numerous hearings in bankruptcy and district courts,

(20) assisting the trustee with the general administration of the estate, and

(21) 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.

18. 16-24261-A-7 C.C. MYERS, INC.
BJ-1
TREVOR STOTKA, BY AND THROUGH HIS GUARDIAN AD LITEM, TERRY STOTKA VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-17 [494]

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, Trevor Stotka, seeks relief from the automatic stay to proceed in state court with its tort claims against the debtor and other defendants. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent his claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

19. 16-24261-A-7 C.C. MYERS, INC.
DNL-16

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
9-25-17 [500]

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 $81,975 in fees and $6,864.20 in expenses, for a total of $88,839.20. This motion covers the period from June 30, 2016 through September 14, 2017. The court approved the movant's employment as the trustee's attorney on July 19, 2016. In performing its services, the movant charged hourly rates of $100, $200, $225, $325, and $425.

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 various documents about the debtor's assets and liabilities,

(2) communicating with various parties about the preservation of the debtor's books and records,

(3) communicating with the trustee and other estate professionals about tax issues,

(4) preparing and prosecuting motion for abandonment of the debtor's records,

(5) reviewing and advising the trustee about several stay relief motions,

(6) assisting the trustee with the sale of real property,

(7) preparing and prosecuting a sale motion,

(8) preparing and prosecuting cash collateral motions,

(9) reviewing and responding to oppositions to the cash collateral motions,

(10) negotiating settlement with Liberty Mutual and preparing settlement agreement,

(11) preparing and prosecuting a motion to approve the settlement agreement,

(12) appearing at court hearings,

(13) assisting the trustee with the general administration of the estate, 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.

20. 16-24261-A-7 C.C. MYERS, INC.
KJH-1

MOTION TO APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
9-25-17 [506]

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, Kimberly Husted, has filed first and final motion for approval of compensation. The requested compensation consists of $168,614.36 in fees and $4,564.03 in expenses, for a total of $173,178.39. The services for the sought compensation were provided from June 30, 2016 through the present. The sought compensation represents 568.5 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 $4,845,478.54 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $168,614.36 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $47,500 (5% of the next $950,000 ($176,000)) + $115,364.36 (3% on

anything above $1 million ($3,845,478.54)). Hence, the requested trustee fees of $168,614.36 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 the debtor's interest in various real and personal property,

(4) employing professionals to assist the trustee with the administration of the estate,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(8) addressing tax and accounting 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.

21. 17-23063-A-7 WILLIAM/LOIS MERKLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 9-14-17 [24]
JPMORGAN CHASE BANK, N.A. VS.

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

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

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

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay with respect to a 2015 Subaru Forester.

Given the entry of the debtor's discharge on August 21, 2017, 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 trustee has filed a non-opposition to the motion. This is cause for the granting of relief from stay as to the estate.

Accordingly, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) 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.

The movant has produced evidence that the vehicle has a value of $18,408 and its secured claim is approximately $18,257. Docket 27.

Nevertheless, as the attached contract is illegible, 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. See Docket 29. The court cannot determine whether the movant is entitled to such fees and costs.

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.

22. 17-25763-A-7 ALBERT VILLELA
DIANE SUN VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-17 [23]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion was not served on the debtor and trustee as required by Fed. R. Bankr. P. 7004(b)(1). That rule requires service by mail. Those parties, however, were served by electronic mail. Docket 24.

Second, no one was served with the amended notice of hearing, Docket 32. There is no proof of service for that notice.

Third, both notices of hearing violate Local Bankruptcy Rule 9014-1(d)(4) (effective October 21, 2016), which requires that a notice indicate whether and when written opposition must be filed. The subject notices do not indicate whether and when written oppositions must be filed. Docket 23 & 32.

Fourth, this court's local rules require that notice of hearing and evidence be filed as separate documments. See, e.g., Local Bankruptcy Rule 9014-1(d)(3) & (e)(3) (Effective October 21, 2016). This motion, however, lumps all documents into one document.

Finally, the motion violates Local Bankruptcy Rule 9014-1(c)(1) because the

motion does not include a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

23. 17-24886-A-7 TAMMY WINTHER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
FIRST INVESTORS FINANCIAL SVCS. VS. — 9-25-17 [20]

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, First Investors Financial Services, seeks relief from the automatic stay with respect to a 2015 Ford Fusion. The movant has produced evidence that the vehicle has a value of $12,875 and its secured claim is approximately $24,669. Docket 22.

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 September 8, 2017. 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.

24. 17-26187-A-7 CLORIA SMITH

ORDER TO
SHOW CAUSE
10-2-17 [16]

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

The debtor did not pay the petition filing fee when the case was filed on October 2, 2017. Although late, debtors paid the fee on October 5, 2017. No prejudice resulted from the late payment.