

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 9, 2015 at 10:00 a.m.

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

1, 2, 3, 6,

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

February 9, 2015 at 10:00 a.m.

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MARCH 9, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 17, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 24, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 11-44616-A-7 LOYD/VERNA HOSTETTER MOTION TO
DNL-7 EMPLOY ACCOUNTANT
1-16-15 [113]

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 requests authority to employ Gonzales & Sisto as accountant for the estate. G&S will prepare estate tax returns and provide general tax-related accounting services. The proposed compensation is a flat fee of \$1,350. The trustee is seeking approval of the compensation without the necessity of a further court order.

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."

The court concludes that the terms of employment and compensation are reasonable. G&S is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

2. 11-44616-A-7 LOYD/VERNA HOSTETTER MOTION TO
DNL-8 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
1-16-15 [107]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's attorney, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 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 \$5,819 in fees (reduced from \$25,565 in fees) and \$181 in expenses, for a total of \$6,000. This motion covers the period from October 10, 2013 through January 11, 2015. The court approved the movant's employment as the trustee's attorney on October 24, 2013. In performing its services, the movant charged hourly rates of \$50, \$75, \$150, \$175, \$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) evaluating the estate's interest in a sublease agreement of a commercial property generating monthly net income, (2) responding to and prevailing on the debtor's motion to compel abandonment of the lease agreement, (3) preparing and prosecuting a motion for turnover of the post-petition sublease proceeds, (4) negotiating with the debtor about the turnover of the proceeds, (5) preparing and prosecuting a motion for a money judgment against the debtor, (6) preparing and prosecuting a motion for operation of the real property (*i.e.*, collecting sublease rent, paying lease rent and paying incidental expenses), (7) negotiating the sale of the estate's interest in the sublease agreement, and (8) 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.

3. 14-30320-A-7 PETER WOLK MOTION FOR
PD-1 RELIEF FROM AUTOMATIC STAY
U.S. BANK TRUST, N.A. VS. 1-6-15 [73]

Tentative Ruling: The motion will be granted in part.

The movant, U.S. Bank Trust, N.A., seeks relief from the automatic stay as to a real property in Chico, California.

The third deed of trust holder on the property purchased the property at a pre-petition foreclosure sale, held on September 24, 2014. The debtor confirms in his statement of financial affairs (item 5) and his non-opposition to this motion that he lost the property to a pre-petition foreclosure sale conducted on September 24, 2014. The debtor filed the instant petition on October 17, 2014.

This is a liquidation proceeding and the debtor has no interest in the property as it has been foreclosed on pre-petition. To the extent the movant's enforcement of its rights is stayed, the foregoing is cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief will be 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.

No fees and costs are awarded because the movant is not an over-secured creditor in this case any longer. See 11 U.S.C. § 506. The debtor was divested of interest in the property prior to the filing of this case. As such, the estate owns no interest in the property either and the movant is not an over-secured creditor in this case.

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

4. 14-31822-A-7 JOHN DYNOWSKI MOTION TO
SET ASIDE DISMISSAL
12-24-14 [12]

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from January 26, 2015 in order for the debtor to give notice of the hearing on the motion to the debtor's creditors. The debtor filed a notice of hearing on January 26, 2015, having served it on what appears to be the debtor's creditors. Docket 16.

The debtor is asking the court to set aside the December 15, 2014 dismissal of the case because he failed to file the master creditor address matrix list and the statement of social security number "within 72 hours of filing of the petition." The debtor's counsel argues that the failure to file the documents was due solely to her "mistake, inadvertence, surprise or excusable neglect" of Fed. R. Civ. P. 60(b) Docket 12 at 2.

The debtor's counsel "uses a bankruptcy program to file the petition and the schedules. The program automatically generates the Creditor's matrix in text format. As well as the Social Security Statement. [sic] [She] did not attach documents at the time of the petition filing, assuming the program had attached the document automatically." Docket 12 at 3.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional

circumstances.”

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The motion has been filed timely. It was filed on December 24, 2014, nine days after the case was dismissed on December 15, 2014. Nonetheless, the motion will be denied.

First, the court did not require the debtor to file the master creditor address matrix list and the statement of social security number “within 72 hours of filing of the petition.” The notice of incomplete filing the court issued when this case was filed on December 4, 2014 required that the master creditor address matrix list and the statement of social security number be filed no later than December 11, 2014, seven days, not three days, after the case was filed. Thus, the debtor had seven days to file the master creditor address matrix list and the statement of social security number.

The court also notes that it did not dismiss the case immediately upon expiration of the December 11, 2014 deadline for filing of the master creditor address matrix list and statement of social security number. The case was not dismissed until December 15, 2014, 11 days after the petition date.

Second, the motion does not say anything about why the debtor’s counsel did not check whether and what documents were attached to the bankruptcy petition, when she filed it. This court is not responsible for the software used by the debtor’s counsel. If the debtor’s counsel’s software did not attach the debtor’s master creditor address matrix list and statement of social security number, this is a mistake, inadvertence, surprise or neglect, but it is not excusable particularly when the court goes to the trouble of issuing a notice informing counsel what has not been filed and when it is due. It is the responsibility of the debtor’s counsel to make certain that all documents prepared by her are actually filed with the court, regardless of whether and what software tools are used to file petition documents.

Third, the above conclusion is further substantiated by the fact that this court issued a detailed notice of incomplete filing, telling the debtor and his counsel what documents were not filed with the court and the deadline by when such documents must be filed with the court. The notice was entered on the docket on the petition filing date, December 4, 2014, and the debtor’s counsel received a notification of the entry of the notice on the docket, given that she is registered to receive electronic notification of filings with the court. Docket 3.

Yet, the subject motion says nothing about the notice of incomplete filing and the debtor’s counsel’s failure to follow up on the notice when she received electronic notification of its filing.

The debtor has not met his ultimate burden of persuasion that a mistake, inadvertence, or surprise exists under Rule 60(b), warranting the setting aside of the dismissal.

Finally, there is no excusable neglect established by the debtor.

“Because Congress has provided no other guideposts for determining what sorts of neglect will be considered ‘excusable,’ we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances

surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The delay in the adjudication of this motion has caused prejudice to the creditors and the trustee and has caused substantial delay in the administration of this bankruptcy case. The deadline for filing objections to discharge and requests for determining the dischargeability of debts is on March 16, 2015, only five weeks from the February 9, 2015 hearing on this motion. And, the debtor has not yet filed any of her bankruptcy schedules or statements with the court. Docket 3.

The creditors and the trustee then have been deprived of a fair and adequate opportunity to assess the debtor's filing and decide whether objections to discharge and/or requests for determining the dischargeability of debts are warranted here.

More, the reason for the neglect was within the reasonable control of the debtor and his counsel. As mentioned above, the debtor's counsel is registered to receive electronic notifications of filings with the court. This means that, at the least, she received an electronic notification on or about December 4, 2014 of the missing petition documents and the deadlines by which these documents were due to be filed with the court. Nevertheless, the documents were never filed. Given the foregoing, the court is not convinced that the debtor has acted in good faith either. Filing a skeletal petition and disregarding the filing deadlines in the notice of incomplete of incomplete filing is not good faith. The motion will be denied.

The court reminds the debtor's counsel that all motions require a docket control number, in accordance with Local Bankruptcy Rule 9014-1(c). Also, the court's local rules require that proofs of service for motions be filed as separate docket entries. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

5. 15-20229-A-7 NATHAN SALAS AMENDED MOTION FOR
GMW-2 RELIEF FROM AUTOMATIC STAY
HENG NEY VS. 1-26-15 [23]

Tentative Ruling: The motion will be granted in part.

The movant, Heng and Chansithat Ney, seeks confirmation that the automatic stay is not in effect, pursuant to 11 U.S.C. § 362(b)(22) and 11 U.S.C. § 362(l), as to a residential real property in Stockton, California.

The movant owns the property and the debtor's relatives had been renting the property from the movant. After the debtor's relatives defaulted under the lease agreement and the movant obtained a judgment and writ of possession, the debtor asserted a claim of right to possession of the property. On January 12, 2015, the state court determined that the debtor was not a tenant on the property, but she was merely an invitee or guest. The debtor's claim of right

to possession of the property was denied and the writ of possession was amended to include the debtor.

The debtor filed the instant case on January 13, 2015.

11 U.S.C. § 362(b)(22) does not apply here. It provides that:

"The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay-

. . .

subject to subsection (1), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor."

However, the debtor is not "a tenant under a lease or rental agreement" within the meaning of 11 U.S.C. § 362(b)(22). The debtor was not named as a tenant under the lease agreement between the movant and her relatives. Thus, 11 U.S.C. § 362(b)(22) does not apply to the instant debtor.

Nevertheless, the state court's determination that the debtor does not have a right of possession to the property and the pre-petition writ of possession naming the debtor that the movant obtained on January 12, 2015, before the filing of this case on January 13, are cause for the termination of the automatic stay under 11 U.S.C. § 362(d)(1).

The motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to obtain possession of the property in accordance with state law.

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.

6. 14-32144-A-7 SIMPLY FOOD ENTERPRISES, MOTION TO
SCB-2 L.L.C. ABANDON
1-26-15 [30]

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:

- 10 office chairs valued at \$250,
- 2 old computers valued at \$150,
- 2 old printers valued at \$100,
- a desk valued at \$50,
- 2 tables valued at \$200,
- 3 hand sinks valued at \$150,
- 9 over racks valued at \$180,
- a roller conveyor valued at \$100,
- an accordion conveyor valued at \$250,
- a manual pallet jack valued at \$175,
- a savage bowl elevator (described as not working) valued at \$500, and
- ingredient inventory (mostly expired or about to expire) valued at \$9,245 (mostly cake and pastry-making materials).

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.

As the inventory is mostly expired or it is about to expire, it is of inconsequential value to the estate. The remaining personal property items are also of inconsequential value to the estate, when the cost of their administration (sale and court approval) is factored. Their aggregate value is approximately \$2,105, whereas only the preparation, filing and prosecution of a motion to sell would be at least approximately \$2,000. Given this, the motion will be granted.

7. 14-31961-A-7 VITALI RUDENCO MOTION FOR
MICHAEL ROMANISHIN VS. RELIEF FROM AUTOMATIC STAY
1-12-15 [23]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Michael Romanishin, seeks relief from the automatic stay as to real property in Rio Linda, California.

The motion claims that the movant is the legal owner of the property and that the debtor leased the property from the movant. The debtor defaulted under the lease agreement in or about September 2014. After presumably the service of a three-day notice to pay or quit, the movant filed an unlawful detainer action. The state court held a trial on December 1, 2014, entering a judgment for possession and a writ of possession, both on December 1, 2014. The debtor filed this bankruptcy case on December 9, 2014.

The movant seeks relief from stay to exercise rights under state law to obtain possession of the property.

The motion will be denied because it is not supported by admissible evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual

allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Although the motion references a supporting declaration of "Edmund R. Gilmartin III," the court has been unable to locate any such declaration in the record. Docket 23 at 1. The motion will be denied without prejudice.

8. 12-30566-A-7 PEGGY OSBORNE MOTION TO
LRR-2 AVOID JUDICIAL LIEN
VS. COVENANT CARE CALIFORNIA, L.L.C. 12-9-14 [23]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Covenant Care California, L.L.C. for the sum of \$117,148.80 on December 7, 2011. The abstract of judgment was recorded with San Joaquin County on January 3, 2012. That lien attached to the debtor's residential real property in Stockton, California.

As the debtor passed away post-petition, on August 1, 2012, after this case was filed on June 1, 2012, this motion to avoid the subject lien is brought by the administrator of the debtor's probate estate.

The motion will be denied for at least two reasons. The property as to which lien avoidance is sought does not match any of the properties listed in Schedule A. The property that is the subject of this motion is 732 Hemlock Street Stockton, California, whereas Schedule A lists this property as only one part of a triplex, consisting of 730 Hemlock Street, 732 Hemlock Street & 734 Hemlock Street.

The confusion is exacerbated also because the grant deed in the subject record identifies a transfer to the debtor of only the 732 Hemlock Street property. It makes no mention of the other two units of the triplex. Docket 26, Ex. B. Yet, the debtor listed as owning 100% interest, in her Schedule A, in all three units of the triplex.

The motion is also not clear why it is seeking lien avoidance only as to the 732 Hemlock Street property and not as to the entire triplex.

Further, the debtor must establish his entitlement to the exemption claim even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993).

The lien avoidance in the subject motion is based on a \$73,900 exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) the debtor claimed in Schedule C as to the entire triplex, i.e., all three units of the triplex.

Cal. Civ. Proc. Code § 704.730(a)(3) provides that:

"(a) The amount of the homestead exemption is one of the following:

. . .

"(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

"(A) A person 65 years of age or older.

"(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

"(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale."

The court is not convinced that the debtor is entitled to the claimed exemption in the triplex as the court cannot tell whether each of the triplex units are separate properties. The grant deed part of this motion states that the 732 Hemlock Street property unit has its own assessor parcel number, suggesting that it is a separate and independent property from the other two units. Docket 26, Ex. B. The court cannot tell whether the other units of the triplex also have separate and independent assessor parcel numbers. This is important because the debtor cannot claim an exemption under Cal. Civ. Proc. Code § 704.730(a)(3) in multiple real properties.

Additionally, "Homestead" is defined by Cal. Civ. Proc. Code § 704.710(c) as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead."

"Dwelling" is defined by Cal. Civ. Proc. Code § 704.710(c) as "a place where a person resides."

The debtor could not have possibly been residing as of the petition date in all three units of the triplex, at the same time. The motion does not establish then that the debtor is entitled to assert an exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3) as to all three units of the triplex. The motion will be denied.

9. 12-27279-A-7 RONIE RONQUILLO MOTION TO
MET-1 AVOID JUDICIAL LIEN
VS. KELKRIS ASSOCIATES, INC. 12-15-14 [28]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of \$23,824.91 on May 5, 2010. The abstract of judgment was recorded with Solano County on June 28, 2010. That lien attached to the debtor's residential real property in Vacaville, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of \$220,000. The unavoidable liens total \$292,154, consisting of a single mortgage in favor of Wells Fargo Home Loans. The debtor claimed an exemption pursuant to Cal. Civ.

Proc. Code § 703.140(b)(1) in the amount of \$1.00.

The motion will be denied because the debtor amended his Schedule C on December 15, 2014, to add an exemption in the subject property, but he did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 26. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien. The motion will be denied.

10. 14-29986-A-7 ELIZABETH CHAN MOTION TO
MET-1 AVOID JUDICIAL LIEN
VS. CACH, L.L.C. 12-7-14 [13]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Cach, L.L.C. for the sum of \$7,003.86 on December 24, 2012. The abstract of judgment was recorded with Solano County on August 20, 2013. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of \$350,000. The unavoidable liens total \$445,154 consisting of a single mortgage in favor of Bank of America Home Loans in the amount of \$443,567 and an HOA lien in favor of Turnstone Homeowners Association in the amount of \$1,587. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C. Docket 12.

The motion will be denied because the debtor amended Schedule C on November 21, 2014, to exempt the subject property. However, she did not serve the Amended Schedule C on any of the creditors or the trustee. Docket 12. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien. The motion will be denied.

11. 14-29986-A-7 ELIZABETH CHAN MOTION TO
MET-2 AVOID JUDICIAL LIEN
VS. AMERICAN EXPRESS CENTURION BANK 12-7-14 [19]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Matthew Mayette in favor of American Express Centurion Bank for the sum of \$24,244.19 on March 8, 2011. The abstract of judgment was recorded with Solano County on May 30, 2012. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is asking the court to avoid the lien.

The subject real property has an approximate value of \$350,000. The unavoidable liens total \$445,154 consisting of a single mortgage in favor of Bank of America Home Loans in the amount of \$443,567 and an HOA lien in favor of Turnstone Homeowners Association in the amount of \$1,587. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the

amount of \$1.00. Docket 12.

The motion will be denied for three reasons. First, service on the respondent creditor violates 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 to an officer of the institution. The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, Managing or General Agent Or Agent for service of process." Docket 24 at 1. This does not satisfy Rule 7004(h).

Second, the motion will be denied also because the debtor amended her Schedule C on November 21, 2014, to add an exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 12. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The 30-day period does not begin to run until the amended Schedule is served. Until it is no longer possible to object to the exemption, the court will not consider a motion to avoid a judicial lien.

Finally, the motion will be denied also because the judgment giving rise to the judicial lien against the property was entered against the debtor's former spouse and not against the debtor. The court cannot tell whether the debt giving rise to the judgment was separate or community debt, when that debt was incurred relative to the parties' divorce and this bankruptcy proceeding, and whether that debt is dischargeable in this bankruptcy proceeding. Although the debtor's former spouse quitclaimed the subject property to the debtor as part of a marital property settlement agreement, the court does not know when this took place and it is not persuaded that the debtor should be entitled to avoid a lien arising from a judgment entered against someone other than the debtor.

12. 14-30697-A-7 CAROLE PETERSEN OBJECTION TO
SSA-2 EXEMPTIONS
12-24-14 [12]

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtor's \$86,520 exemption claim under Cal. Civ. Proc. Code § 704.115 in an annuity with a scheduled value of \$73,427.

The debtor has filed opposition to the objection, pointing out that she amended her exemptions. The latest amendment to her exemption was filed on January 26, 2015. It is now for \$73,427 and it is based on Cal. Civ. Proc. Code § 704.100(c). Docket 39.

As the debtor has changed her exemption in the annuity by altering its statutory basis, the court will overrule this objection without prejudice to any objection the trustee has to the amended exemption (provided it is timely interposed).

FINAL RULINGS BEGIN HERE

13. 13-35308-A-7 DOROTHY PARENT MOTION FOR
BJ-2 SANCTIONS, ATTORNEY'S FEES AND
COSTS AND FOR EQUITABLE
SUBORDINATION
1-9-15 [119]

Final Ruling: The hearing on this motion has been continued to February 23, 2015 at 10:00 a.m.

14. 14-27410-A-7 THEODORE/MYRNA SNEED MOTION FOR
JCW-2 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST CO. VS. 12-30-14 [30]

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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in El Dorado Hills, California.

Given the entry of the debtor's discharge on October 28, 2014, 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 \$575,000 and it is encumbered by claims totaling approximately \$641,513. The movant's deed is in first priority position and secures a claim of approximately \$612,609.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted 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.

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.

February 9, 2015 at 10:00 a.m.

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.

15. 12-37632-A-7 JOSEPH/VALERIE GWERDER MOTION TO
GMR-4 APPROVE COMPENSATION FOR CHAPTER 7
TRUSTEE
1-2-15 [89]

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, Geoffrey Richards, has filed his first and final motion for approval of compensation. The requested compensation consists of \$3,250 in fees and \$61.08 in expenses, for a total of \$3,311.08. The services for the sought compensation were provided from October 1, 2012 through the present. The sought compensation is based on a \$25,000 distribution to creditors. The trustee consummated a short sale of a real property, resulting in a \$25,000 buyer's premium to the estate. The trustee is not seeking compensation based on any other distributions made in connection with the short sale.

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

The movant made \$25,000 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$3,250 (\$1,250 (25% of the first \$5,000) + \$2,000 (10% of the next \$45,000 (or only \$20,000) + \$0.00 (5% of the next \$950,000 (or \$0.00)). Hence, the requested trustee fees of \$3,250 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."

[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."

The court concludes that the terms of employment and compensation are reasonable. Mr. Brazeal is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

18. 13-34641-A-7 JOE/WENDY SILVA MOTION FOR
BHT-1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST CO. VS. 1-5-15 [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 in part and dismissed as moot in part.

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

Given the entry of the debtor's discharge on March 3, 2014, 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 \$176,291 and it is encumbered by claims totaling approximately \$415,423. The movant's deed is in first priority position and secures a claim of approximately \$372,591.

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 January 27, 2015.

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.

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.

19. 11-27853-A-7 ROBERT HENRICHS MOTION TO
HSM-2 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
1-8-15 [89]

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 \$6,244 in fees and \$12 in expenses, for a total of \$6,256. This motion covers the period from October 9, 2013 through February 9, 2015. The court approved the movant's employment as the trustee's attorney on November 15, 2013. In performing its services, the movant charged hourly rates of \$380 and \$390.

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) advising the trustee about the assets of the estate, conducting discovery, revoking the debtor's discharge and other general matters pertaining to the administration of the estate, (2) reviewing the debtor's complicated asset history to assess the nature and value of estate assets, (3) preparing a discovery plan to obtain additional information about the debtor's assets, (4) evaluating tax and abandonment issues, and (5) 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. 14-31474-A-7 JOHN/JUDY STAGNO MOTION FOR
CJO-1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 1-12-15 [11]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need

not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. See Docket 17. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

21. 10-40477-A-7 MICHAEL/STACIE RODRIGUEZ MOTION TO
MJR-3 AVOID JUDICIAL LIEN
VS. AMERICAN EXPRESS CENTURION BANK 1-26-15 [44]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, American Express Centurion 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 to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not served via certified mail. It was served by first class mail in violation of Rule 7004(h). Docket 48.

22. 14-27980-A-7 GKUBI SMART MOTION TO
HSM-5 EXTEND TIME
12-31-14 [84]

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 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.

On December 22, 2014, the court entered an order extending by 88 days, from November 17, 2014 to February 13, 2015, the deadline for objecting to the debtor's exemptions filed in a Schedule C on the petition date, August 5, 2014. Docket 80.

But, the debtor filed an Amended Schedule C on December 5, 2014. Docket 63. The deadline for objections to the December 5 exemptions is January 4, 2015.

Given the shortening of the February 13 deadline to January 4 by the filing of

the December 5 exemptions and given the exemption changes in the December 5 Amended Schedule C, the trustee asks for a 60-day extension, from January 4, 2015 to March 6, 2015, of the deadline for objecting to the debtor's December 5 exemptions.

Fed. R. Bankr. P. 4003(b)(1) provides that:

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

The exemptions filed on August 5, 2014 were pursuant to Cal. Civ. Proc. Code § 703.140, whereas the exemptions filed on December 5, 2014 are asserted pursuant to Cal. Civ. Proc. Code § 704.

The trustee also needs additional time to investigate the debtor's financial affairs, as there appear to be inaccuracies and/or omissions in the petition documents. For instance, although the debtor listed no real property interest in his original Schedule A and his application for waiver of the chapter 7 filing fee, both filed on August 5, 2014, after his waiver application was granted, the debtor filed an Amended Schedule A on August 25, 2014, listing interest in a real property with a value of \$300,000. Dockets 1, 5, 14. The debtor's Amended Schedule A filed on December 5, 2014 further changes his interest in the property. Now, the value of the property is \$373,000, leaving approximately \$136,000 of equity after taking into account the single mortgage against the property for \$237,032. Dockets 61 & 64. The trustee also does not have information of the debtor's basis for claiming a \$135,967 exemption in the property. As a result, the trustee needs additional time to investigate the debtor's financial affairs.

The foregoing is cause for the requested extension. The deadline for objecting to the debtor's December 5, 2014 exemptions will be extended to March 6, 2015.

23. 14-31580-A-7 JOHN HANNA MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA INC. VS. 1-12-15 [9]

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

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2007 Kia Optima. The vehicle was repossessed by the movant pre-petition, in October 2014. Docket 1, Statement of Financial Affairs, item 5. This case was filed on November 25, 2014. The movant has produced some

Citimortgage for the filing of a corrected proof of claim, and (6) preparing and filing employment and compensation motions.

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

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

25. 14-28789-A-7 ANTHONY SHELL MOTION TO
RAC-2 AVOID JUDICIAL LIEN
VS. SMW 104 FEDERAL CREDIT UNION 12-30-14 [30]

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 SMW 104 Federal Credit Union for the sum of \$18,316.88 on March 20, 2014. The abstract of judgment was recorded with El Dorado County on April 10, 2014. That lien attached to the debtor's one-half interest in a real property in Placerville, 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 \$270,000 as of the petition date. Dockets 15 & 32. The unavoidable liens totaled \$221,500 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 15 & 32. This leaves \$48,500 of equity in the property. As the debtor's interest in the property is only 50%, his interest in the equity is \$24,250. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$24,250 in Schedule C. Dockets 15 & 32.

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

26. 12-34696-A-7 VINCENT/SHEILA STIMMLER MOTION TO
HLG-1 AVOID JUDICIAL LIEN
VS. MIDLAND FUNDING L.L.C. 1-9-15 [36]

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 Debtor Vincent Stimmler in favor of Midland Funding L.L.C. for the sum of \$15,264.92 on December 13, 2011. The abstract of judgment was recorded with El Dorado County on January 6, 2012. That lien attached to the debtor's residential real property in El Dorado Hills, 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 \$443,100 as of the petition date. Dockets 1 & 38. The unavoidable liens totaled \$664,421.24 on that same date, consisting of a first mortgage in favor of GMAC Mortgage for \$528,358.88 and a second mortgage in favor of Citi Mortgage for \$136,062.36. Dockets 1 & 38. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$10.00 in Schedule C. Dockets 1 & 38.

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).