

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**February 27, 2017 at 10:00 a.m.**

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

**2, 3, 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 MARCH 27, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 13, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 20, 2016. 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. 16-28112-A-7 IMRE/LAURIE VOROS MOTION TO  
LBG-2 AVOID JUDICIAL LIEN  
VS. AMERICAN EXPRESS BANK, FSB 1-26-17 [18]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against debtor Imre Voros in favor of American Express Bank for the sum of \$6,765.73 on May 22, 2012. The abstract of judgment was recorded with Nevada County on July 22, 2016. That lien attached to the debtor's residential real property in Grass Valley, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f) (1) (A).

The amounts in the motion papers do not match the figures in the bankruptcy schedules and, unlike the motion's contention, there is no exemption claimed in Schedule C. The value of the subject property in Schedule A is \$126,000 and not \$200,000 as claimed by the motion. The judgment lien amount in the abstract of judgment is \$6,765.73 and not \$6,802.43 as claimed by the motion.

More important, there is no impaired exemption because the debtor has not exempted the property. The formula in 11 U.S.C. § 522(f) (2) (A) (iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Given these discrepancies and the lack of an exemption claim, the motion will be denied without prejudice.

2. 12-28413-A-7 F. RODGERS CORPORATION MOTION FOR  
CWC-51 ADMINISTRATIVE EXPENSES  
1-26-17 [1151]

**Tentative Ruling:** The motion will be granted.

The trustee asks that the post-petition estate income tax liability (including taxes, interest, and penalties) owed to the California Franchise Tax Board be allowed and paid as an administrative expense. This liability is for the period ending on September 30, 2016 and is in the amount of \$1,717.

The trustee asks that the post-petition estate income tax liability (including taxes, interest, and penalties) owed to the Internal Revenue Service be allowed and paid as an administrative expense. This liability is for the period ending on September 30, 2016, in the amount of \$7,636.31.

11 U.S.C. § 503(b) (1) (B) provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including -

(1) . . . (B) any tax - (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a) (8) of this title."

This case was filed on April 30, 2012. The tax liability in question was incurred in 2015 and 2016. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b) (1) (B).

3. 17-20422-A-7 ROGER ROBERTS MOTION FOR  
MET-1 RELIEF FROM AUTOMATIC STAY  
BANK OF THE WEST VS. 2-6-17 [10]

**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, Bank of the West, seeks relief from the automatic stay with respect to a 2013 Coleman Vagabond Travel trailer. The vehicle has a value of \$15,000 and its secured claim is approximately \$29,207.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on February 15, 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.

4. 16-27435-A-7 GARY/TRACY EASLEY MOTION TO  
NF-1 AVOID JUDICIAL LIEN  
VS. TRI COUNTIES BANK 1-19-17 [17]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against debtor Gary Easley in favor of Tri Counties Bank for the sum of \$24,278.16 on July 13, 2016. The abstract of judgment was recorded with Butte County on August 4, 2016. That lien attached to the debtor's residential real property in Magalia, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f)(1)(A).

The motion will be denied because the amounts in the motion do not match the amounts in the bankruptcy schedules. While the motion claims that there is a voluntary mortgage against the property in the amount of \$210,000, no such lien is found in Schedule D or Amended Schedule D. Dockets 1, 17, 19, 22. While the motion asserts that the exemption is in the amount of \$5,721.84, the exemption in Schedule C is in the amount of \$30,000. Dockets 1, 17, 19. Given these discrepancies, the motion will be denied.

5. 16-20945-A-7 DENNIS/MARGARET EDWARDS  
MDM-3

MOTION TO  
APPROVE COMPENSATION OF CHAPTER 7  
TRUSTEE  
1-26-17 [61]

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

The chapter 7 trustee, Michael McGranahan, has filed first and final motion for approval of compensation. The requested compensation consists of \$15,459.54 in fees and \$135.94 in expenses, for a total of \$15,595.48. The services for the sought compensation were provided from February 19, 2016 through January 25, 2017. The sought compensation represents 56.6 hours of services.

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. 9<sup>th</sup> 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 a real property, (4) employing professionals to assist the estate in the administration of assets, (5) communicating with the estate's professionals about various issues, including sale of the real property, (6) reviewing claims, including claims secured by the real property, (7) resolving an interference with the sale by the debtors, (8) reviewing various pleadings and documents prepared by the estate's professionals, (9) addressing tax issues, (10) preparing final report, and (11) preparing compensation motion.

The requested compensation exceeds the cap of section 326(a).

The movant will make or has made \$172,034.76 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$11,851.73 and not \$15,459.54:

- (\$1,250 (25% of the first \$5,000) + \$4,500 (10% of the next \$45,000) + \$6,101.73 (5% of the next \$950,000 (or \$122,034.76))).

The requested trustee fees of \$15,459.54 exceed the cap of section 326(a). The court will approve only the fees as limited by the cap, \$11,851.73.

The court concludes that the compensation of \$11,987.67 (\$11,851.73 in fees and \$135.94 of expenses) is for actual and necessary services rendered in the administration of this estate. That compensation will be approved.

6. 14-24449-A-7 ROBERT/KATHLEEN BRANSON  
PA-7

MOTION TO  
SELL AND TO APPROVE COMPENSATION  
FOR BROKER  
12-20-16 [126]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell as is and free and clear of liens for \$363,000 the estate's interest in a real property in Truckee, California to Gary Massetani, Karen Massetani, and Nicolas Massetani. The trustee also asks for payment approval of the 6% real estate broker's commission, asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h), and asks for a good faith finding under 11 U.S.C. § 363(m).

The sales price does not include a buyer's premium of \$21,250 that is to be paid by the buyers to the trustee, for the benefit of the estate.

The buyers will also pay \$9,734.14 to cover escrow fees, document preparation and mobile signing fees, government recording charges, transfer taxes, outstanding HOA dues (\$6,814.84), hazards disclosures, sewer test fees, and taxes and assessments to Tahoe-Truckee Sanitation.

The sale is free and clear of the only encumbrance on the property, of Wells Fargo Bank, in the scheduled amount of \$386,567. Wells Fargo Bank has agreed to accept \$338,820.75 in full satisfaction of its claim.

From the \$363,000 purchase price, Wells Fargo Bank has authorized the payment of county taxes in the amount of \$1,861.75, signing fee in the amount of \$30, escrow fees in the amount of \$507.50, and real estate commissions in the total amount of \$21,780 or 6% of the purchase price. After payment of these, \$338,820.75 is left to be paid on account of Wells Fargo Bank's claim.

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

The sale will generate \$21,250 for distribution to creditors of the estate. No negative tax consequences are anticipated from the sale. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given the consent to the sale by Wells Fargo Bank. The court will approve the sale free and clear only of the claim held by Wells Fargo Bank, as no other encumbrances have been identified by the motion.

And, the court will approve the sale free and clear of Wells Fargo Bank's claim only to the extent Wells Fargo Bank consents to the sale. The bank's conditional non-opposition identifies a purchase price (\$365,000) different from the price identified by the motion. Docket 134.

The sale is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment. The court will also make a good faith finding as to the stalking horse buyers. See Docket 128 at 6-7.

7. 14-24449-A-7 ROBERT/KATHLEEN BRANSON  
PA-8

MOTION TO  
SELL, APPROVE COMPENSATION FOR  
BROKER AND TO PAY  
2-6-17 [142]

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

The chapter 7 trustee requests authority to sell as is and free and clear of liens for \$530,000 the estate's interest in a real property in Sonoma, California to Kenneth Wong. The trustee also asks for payment approval of the 6% real estate broker's commission, asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h), and asks for a good faith finding under 11 U.S.C. § 363(m).

The sales price does not include a buyer's premium of \$29,750 that is to be paid by the buyers to the trustee, for the benefit of the estate.

In addition to the purchase price, the buyer will pay \$31,997.50 to cover escrow fees, closing costs, title insurance, recording service and mobile signing fees, government recording charges, transfer taxes, and the \$29,750 buyer's premium.

The sale is free and clear of the only encumbrance on the property, of Wells Fargo Bank, in the asserted amount of \$671,370.98. Wells Fargo Bank has agreed to accept \$491,779.73 in full satisfaction of its claim.

From the \$530,000 purchase price, Wells Fargo Bank has authorized the payment of county taxes in the amount of \$3,213.77, seller concessions in the amount of \$1,561, closing costs in the amount of \$765, natural hazards disclosure in the amount of \$100, title insurance and additional closing costs in the amount of \$780.50, and real estate commissions in the total amount of \$31,800. After payment of these, \$491,779.73 is left to be paid on account of Wells Fargo Bank's claim.

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

The sale will generate \$29,750 for distribution to creditors of the estate. No negative tax consequences are anticipated from the sale. Hence, the sale will be approved pursuant to 11 U.S.C. §§ 363(b) and 363(f)(2), given the consent to the sale by Wells Fargo Bank. The court will approve the sale free and clear only of the claim held by Wells Fargo Bank, as no other encumbrances have been identified by the motion.

The sale is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

The court will also make a good faith finding, if and when a declaration from the buyer is submitted to the court. The court sees no declaration from the buyer in the record.

8. 11-37753-A-7 CORY WIEST  
MS-2  
VS. VS. LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

MOTION TO  
AVOID JUDICIAL LIEN  
1-13-17 [31]

**Tentative Ruling:** The motion will be granted.

The court continued the hearing on this motion from February 13 in order for parties in interest to have the opportunity to object to the debtor's altered exemption claim. The deadline for such objections was the end of the day on February 13. As no objections were filed prior to the deadline, the court will address the merits of the motion.

A judgment was entered against the debtor in favor of Richard Byers for the sum of \$8,740.75 on March 17, 2008. Subsequently, the judgment was assigned to the Labor Commissioner of the State of California. The abstract of judgment was recorded with Solano County on April 14, 2008. That lien attached to the debtor's residential real property in Fairfield, California.

The subject real property had an approximate value of \$127,800 as of the petition date. Dockets 33 & 1. The unavoidable liens totaled \$195,722 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 19 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Dockets 19 & 33.

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).

9. 16-27589-A-7 ROBERT TURNER  
SLH-1

MOTION TO  
WITHDRAW AS ATTORNEY  
1-4-17 [17]

**Tentative Ruling:** The motion will be granted.

The hearing on this motion was continued from February 13 in order for the movant to supplement the record. The movant has filed additional pleadings in support of this motion. Docket 33 & 35. An amended ruling from February 13 follows below.

Attorney Seth Hanson asks for permission to withdraw as counsel for the debtor because the debtor no longer wishes the movant to represent him and the debtor has demanded a full refund of the attorney's fees paid to the movant.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at \*1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at \*1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) *In General.*

"(1) *If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

"(2) *A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

"(B) *Mandatory Withdrawal.*

"A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

"(1) *The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

"(2) *The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

"(3) *The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

"(C) *Permissive Withdrawal.*

"If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

"(1) *The client*

*(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or*

*(b) seeks to pursue an illegal course of conduct, or*

*(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or*

*(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or*

*(e) insists, in a matter not pending before a tribunal, that the member engage*

*in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or  
(f) breaches an agreement or obligation to the member as to expenses or fees.*

*"(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or*

*"(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or*

*"(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or*

*"(5) The client knowingly and freely assents to termination of the employment;  
or*

*"(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."*

The motion will be granted. The debtor's demand that the movant no longer represents him and the demand for refund of all attorney's fees paid to the movant renders it unreasonably difficult for the movant to carry out his duties as counsel for the debtor. This is sufficient cause for permitting the movant's withdrawal as counsel for the debtor. Accordingly, the motion will be granted.

**FINAL RULINGS BEGIN HERE**

10. 08-29300-A-7 ANTHONY/CHARLOTTE SESTITO MOTION TO  
MET-1 AVOID JUDICIAL LIEN  
VS. MESA LEASING, INC. 1-17-17 [40]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Charlotte Sestito in favor of Mesa Leasing, Inc. for the sum of \$47,255.48 on March 1, 2007. The abstract of judgment was recorded with Sacramento County on May 24, 2007. That lien attached to the debtor's residential real property in Elk Grove, 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 \$336,688 as of the petition date. Dockets 42 & 44. The unavoidable liens totaled \$445,000 on that same date, consisting of a mortgage for \$378,000 in favor of Countrywide Home Loans and a mortgage for \$67,000 in favor of Grow America Fund. Dockets 1, 42, 44. 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. Dockets 37 & 42.

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).

11. 14-31211-A-7 ALICE CARLSON MOTION TO  
MOH-2 AVOID JUDICIAL LIEN  
VS. CITIBANK (SOUTH DAKOTA), N.A. 11-21-16 [38]

**Final Ruling:** The hearing on the motion will be continued to March 13, 2017 at 10:00 a.m.

The court continued the hearing on this motion from January 17 due to service deficiencies associated with the debtor's Amended Schedule C, filed on December 2, 2016. The Amended Schedule C was not served on all creditors. While the debtor corrected the service deficiency, she did not do it in time for the 30-day exemption objection deadline to expire before the February 27 hearing on this motion. Parties in interest, including all creditors, have 30 days from an exemption amendment to object to an added or altered exemption. Fed. R. Bankr. P. 4003(b)(1).

The Amended Schedule C, altering the subject exemption to the property was not served on all creditors until January 26, 2017, meaning that the deadline for

exemption objections does not expire until the end of the day on February 27, 2017, which is also the day on the hearing of this motion. Docket 54; see also Fed. R. Bankr. P. 9006(a)(1)(C) (prescribing that "if the last day [of the period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

The 30<sup>th</sup> day after the January 26 service of the Amended Schedule C is Saturday, February 25, meaning that creditors have until the end of the day on Monday, February 27, to object to the altered exemption claim. The hearing on this motion is set for February 27 at 10:00 a.m.

Accordingly, the hearing on this motion will be continued to March 13, 2017 at 10:00 a.m.

12. 16-28112-A-7 IMRE/LAURIE VOROS MOTION TO  
LBG-1 AVOID JUDICIAL LIEN  
VS. ABSOLUTE RESOLUTIONS IX, L.L.C. 1-26-17 [13]

**Final Ruling:** The motion will be dismissed without prejudice because the court cannot tell whether service of the motion complies 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 Absolute Resolutions IX, L.L.C., addressing notice to an individual named Charles Purdy IV without indicating his status as an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. Hence, there is no proof that service was in accordance with Rule 7004(b)(3). Docket 17.

And, while the debtor served Absolute's attorney, Lannister Law Corporation, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004); Docket 17.

In the event the debtor will be resetting the motion for hearing, he should note that the amounts in the motion do not match the amounts in the exhibits and there is no exemption claimed in Schedule C. The value of the subject property in Schedule A is \$126,000 and not \$200,000 as claimed by the motion. The judgment lien amount as stated in the abstract of judgment is \$5,604.78 and not \$4,040.65 as claimed in the motion.

13. 16-27533-A-7 MARK/DEBRA HICKEY MOTION FOR  
RAS-1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK NATIONAL TRUST CO. VS. 2-7-17 [25]

**Final Ruling:** The movant has provided only 21 days' notice of the hearing on this motion. Docket 30. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 26. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at

the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

14. 16-20438-A-7 JOHN/ROBERTA PADJEN MOTION FOR  
EAT-1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 1-30-17 [36]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Roseville, California under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4).

The property has a value of \$430,000 according to the movant (Docket 40, Ex. 6) and \$380,000 according to the debtors (Docket 14, Schedule A), and it is encumbered by claims totaling approximately \$431,022. The movant's deed is the only encumbrance against the property.

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

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

Relief under section 362(d)(1) is also warranted because the trustee has filed a non-opposition to the motion and the debtors' filing of this petition was part of a scheme to delay, hinder, or defraud creditors, further warranting in rem relief under section 362(d)(4).

11 U.S.C. § 362(d)(4) prescribes that:

*"On request of a 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 . . .*

*"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

*"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

*"(B) multiple bankruptcy filings affecting such real property."*

In 2006, the debtors took a loan from World Savings Bank, securing it by the property. The movant inherited the loan in November 2009. In December 2011, the debtors defaulted under the movant's loan. After the movant initiated a foreclosure against the property in 2012, the debtor Roberta Padjen filed a chapter 13 bankruptcy case in this district, Case No. 12-41024, on December 5, 2012. That case was dismissed on December 27, 2012, due to Mrs. Padjen's failure to file a chapter 13 plan.

Few days later, on January 3, 2013, the debtors transferred a partial interest in the property to Delfina Prado. Docket 40, Ex. 5. Less than a month later, on January 28, 2013, Ms. Prado filed her own chapter 13 bankruptcy case in the United States Bankruptcy Court for the Central District of California, Case No. 13-10585. That case was dismissed on April 12, 2013 due to Ms. Prado's failure to appear at the meeting of creditors and her failure to make plan payments. Case No. 13-10585, Docket 22.

The movant continued with foreclosure on the property, recording a notice of trustee's sale for January 28, 2016. The debtors filed this chapter 7 case on January 27, 2016, by filing a skeletal bankruptcy petition. Even though the court granted them permission to pay the filing fee in installments, the debtors have not done so and, as a result, their discharge has not yet been entered.

Given the debtors' transfer of property interest to a transferee few days prior to the transferee's own bankruptcy filing, given the swift dismissals of Mrs. Padjen's and Ms. Prado's bankruptcy cases, given the filing of this case one day prior to the movant's foreclosure sale, and given the debtors' failure to prosecute this case by not paying the filing fee installments, section 362(d)(4) relief is appropriate. The debtors' filing of this petition was part of a scheme to delay, hinder, or defraud creditors, including the movant.

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) is not 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. 10-39048-A-7 HEIDI RYAN MOTION TO  
MS-1 AVOID JUDICIAL LIEN  
VS. KELKRIS ASSOCIATES, INC. 1-11-17 [24]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The court continued the hearing on this motion from February 13 in order for parties in interest to have the opportunity to object to the debtor's altered exemption claim. The deadline for such objections was the end of the day on February 13. As no objections were filed prior to the deadline, the court will address the merits of the motion.

The motion will be granted.

A judgment was entered against the debtor in favor of Kelkris Associates, Inc. for the sum of \$20,169.92 on April 28, 2010. The abstract of judgment was recorded with Solano County on June 1, 2010. That lien attached to the debtor's residential real property in Fairfield, 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 \$263,000 as of the petition date. Dockets 26 & 1. The unavoidable liens totaled \$442,826 on that same date, consisting of a single mortgage in favor of Wachovia. Dockets 1, 26, 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Dockets 22 & 27; see also Docket 31 (reflecting service of the Amended Schedule C on January 13, 2017).

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).

16. 16-24261-A-7 C.C. MYERS, INC. MOTION FOR  
DWH-1 RELIEF FROM AUTOMATIC STAY  
CHAD IRVIN VS. 1-31-17 [368]

**Final Ruling:** The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. 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.

17. 16-28175-A-7 DANNY FEWELL MOTION FOR  
WFM-1 RELIEF FROM AUTOMATIC STAY  
BANK OF AMERICA, N.A. VS. 1-20-17 [24]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of \$211,000 (Docket 23, Schedule A/B) and it is encumbered by claims totaling approximately \$217,172 (excluding \$2,516 in outstanding property taxes). The movant's deed is the only mortgage encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 9, 2017.

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

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

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

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

18. 15-22890-A-7 ANGELICA BOCHAROFF MOTION TO  
PA-5 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
1-30-17 [93]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Pino & Associates, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$12,000 in fees (discounted from \$19,355) and \$0.00 in expenses (discounted from an unidentified amount). This motion covers the period from September 7, 2015 through the present. The court approved the movant's employment as the trustee's attorney on October 6, 2015. In performing its services, the movant charged an hourly rate of \$350.

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,
- (2) communicating with the debtor's counsel and requesting documents,
- (3) reviewing documents produced by the debtor,
- (4) requesting turnover of assets,
- (5) reviewing documents and analyzing issues pertaining to a pending dissolution proceeding involving the debtor,
- (6) preparing and filing notice of bankruptcy in the dissolution proceeding,
- (7) reviewing discovery propounded on the debtor in the dissolution proceeding,
- (8) researching issues pertaining to an exemption claim,
- (9) preparing and filing an objection to the exemption claim,
- (10) reviewing amended schedules C and the debtor's response to the objection,
- (11) reviewing and responding to the debtor's motion to convert the case,
- (12) conducting discovery pertaining to the conversion motion,
- (13) negotiating a global settlement agreement with the debtor,
- (14) preparing a settlement agreement and preparing and filing a motion for approval of the settlement,
- (15) appearing at court hearings, and
- (16) 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.

19. 16-28392-A-7 ALFONSO CARRILLO AND  
NLG-1 ZAHIRA RAMOS  
FIRST TECH FEDERAL CREDIT UNION VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
1-25-17 [14]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2009 Acura TL. The vehicle has a value of \$11,523 and its secured claim is approximately \$14,261.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on January 26, 2017.

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.