**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**April 7, 2014 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:

**3, 5, 9, 10**

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. 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 MAY 5, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 21, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 28, 2014. 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 called beginning at 10:00 a.m.***

1. 14-21312-A-7 ADR-1 WILLIAM HEINZ VS.
ALBERT VILLELA AND SANGITA WATI
MOTION FOR RELIEF FROM AUTOMATIC STAY 2-19-14 [17]

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

The hearing on this motion was continued from March 24, 2014 because the debtors were required to appear at the initial meeting of creditors on March 24 at the same this motion was to be heard by the court.

The movant, William Heinz, seeks relief from the automatic stay as to a real property in Tracy, California. The movant is the legal owner of the property and the debtors leased it from him. The debtors defaulted under the lease agreement in or about October 2013. The debtors filed the instant case on February 12, 2014. The movant seeks relief from stay to exercise his rights under state law to obtain possession of the property.

The debtors' response filed on March 10 states that the debtors have attempted to pay post-petition rent to the movant, but the movant has refused to accept the rent. The debtors also ask the court not to waive the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

This is a liquidation proceeding and the debtors have no interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement with the movant. The fact that they may be willing to pay post-petition rent does not undo the $6,000 pre-bankruptcy rent default, nor does their willingness to pay future rent revive their tenancy which expired upon the expiration of the 3-day notice served on them before the bankruptcy case was filed. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

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

As the movant has not even filed an eviction action against the debtors yet, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

2. 10-49713-A-7 CLH-1
SUSAN HULSEBOSCH
MOTION TO COMPEL ABANDONMENT 3-10-14 [54]

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

Peter Hulsebosch asks the court to order the abandonment of the estate's claims against him for outstanding child and/or spousal support. He contends that the claims have been claimed as exempt in their entirety and that the trustee has

failed to object to those exemptions.

The trustee opposes the motion. The debtor also filed a response to the motion on March 31, only seven days before the April 7 hearing.

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

The response filed by the debtor will be stricken as late. This motion was brought under Local Bankruptcy Rule 9014-1(f)(1), which requires responses to the motion to be filed at least 14 days prior to the hearing. Yet, the debtor's response to the motion was filed only seven days prior to the hearing.

To establish standing, a plaintiff must meet both the constitutional and prudential requirements of standing. Bennett v. Spear, 520 U.S. 154, 162 (1997). To establish standing under the case or controversy requirement of Article III of the United States Constitution, a plaintiff (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Lexmark Intern., Inc. v. Static Control Components, Inc., Case No. 12-873, WL 1168967, at *6 (Mar. 25, 2014); Allen v. Wright, 468 U.S. 737, 751 (1984), *rev'd on other grounds*, 2014 WL 1168967 (Mar. 25, 2014); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).

The prudential requirements of standing are: (1) the litigant must assert his own legal interests and not those of third parties, known as the real party interest; (2) the litigant must assert an injury peculiar to himself or to a distinct group of which he is a part; and (3) the interest of the litigant must be within the "zone of interests" to be protected by the statute under which his claim arises. Lexmark Intern., Inc. v. Static Control Components, Inc., Case No. 12-873, WL 1168967, at *6 (Mar. 25, 2014); Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 99-100 (1979).

The motion will be denied because the court is not convinced that the movant has standing to bring this motion. He is not a party in interest within the meaning of 11 U.S.C. § 554(b). While the movant is the respondent to the child and/or spousal support claims and he has pecuniary interest in the outcome of those claims, he does not have an interest to the outcome of the abandonment of the claims. He has standing to defend the claims but does not have standing to seek a determination about who should be asserting the claims against him.

In other words, the movant's injury in fact is his potential liability on the child and/or spousal support claims. But, adjudication of abandonment of the claims will not redress or prevent the movant's liability on the claims. Even if the court were to order abandonment of the claims, which will be to the debtor, the abandonment will have no effect on the merits of the claims or the movant's liability under the claims. The only difference abandonment will make is to whom recovery on the claims will be paid, the debtor or the trustee. Thus, the movant does not have constitutional standing to prosecute this motion.

The movant does not have prudential standing either. Abandonment determines the value of property only as to the bankruptcy estate and, indirectly, its creditors. It does not determine the value of property as to anyone else, including the debtor. If the court determines that the property is burdensome or of inconsequential value to the estate, the property is abandoned, exiting the estate and returning back to the debtor. At best, then, only the trustee, the debtor and creditors may be impacted by abandonment of property. The movant is not the trustee, is not the debtor and is not a creditor of the estate. Hence, by filing and prosecuting this motion, the movant is not asserting his legal interests. Rather, he is asserting the interests of the debtor, even though, as demonstrated by the debtor's belated response to this motion, the debtor is perfectly capable of seeking abandonment herself. Given the foregoing, the motion will be denied.

3. 13-33618-A-7 CAROLE BAIRD — MOTION FOR TURNOVER
DNL-6 — 3-24-14 [100]

**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 debtor 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 trustee requests the court to direct the debtor to turn over to the estate a real property in Baja California Sur, Mexico and to account for and turnover the rental proceeds from the property.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case. If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

Hence, a bankruptcy trustee's turnover power is not restricted to estate property in the possession of the respondent at the time the turnover motion is filed. The trustee may seek turnover of property that existed at the moment the bankruptcy petition was filed, without regard to any post-petition transfers of that property. If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

The subject property - owned via the debtor's interest in 100% of Cuatro Buenos Amigos, a California partnership - has a scheduled value of $150,000 and it does not appear to have any encumbrances. Docket 17, Schedule B. On March 18, 2014, the debtor and another man prevented the estate's real estate broker from accessing the property. The debtor has not responded to the trustee's requests for access to the property and accounting of the rental proceeds. Given this, the court will order the debtor to turn over the real property to the estate and to account for the rental proceeds from the property. The motion will be granted.

4. 14-22319-A-7 JASON GUIDRY — MOTION TO EXTEND AUTOMATIC STAY
DMR-1 — 3-11-14 [9]

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

The debtor is asking the court to extend the automatic stay. The motion does not identify the legal authority for the sought relief.

"Alternatively, the debtor requests that this Court issue an order pursuant to section 362(j) confirming that the automatic stay provided under section 362(a) will terminate under section 362(c)(3) only as to actions taken against the debtor or property of the debtor, but not as to actions taken against property of the estate or actions not taken in relation to a debt."

Docket 9 at 2.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. 11 U.S.C. § 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

The debtor had one prior case pending and dismissed within the year prior to this case. The debtor filed Case No. 14-21146-D-7 on February 6, 2014. That case was dismissed on February 25, 2014, due to the debtor's failure to file petition documents. This case was filed on March 7, 2014.

The motion will be denied because the hearing for this motion is on the 31st day after the filing of this case.

11 U.S.C. § 362(c)(3)(B) requires the hearing on the motion for extension of the automatic stay to be completed before the expiration of the 30-day period. "[O]n the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed."

Here, the debtor filed this case on March 7, filed this motion on March 11, but set the hearing on the motion for April 7, 2014, the 31st day after the March 7

filing. The motion will be denied because it does not comply with the temporal requirement of 11 U.S.C. § 362(c)(3)(B).

Even if the motion had complied with the temporal requirement of 11 U.S.C. § 362(c)(3)(B), the motion would still be denied. The debtor contends that his prior case was dismissed because "[he] was not able to obtain the August 2013 proof of income documentation" as "[his] employer had recently gone out of business." Docket 11.

However, this is not quite true. The debtor's prior case was dismissed because he did not file the attorney's disclosure statement, schedules A through J, the statement of financial affairs, the statistical summary, and the summary of schedules, in addition to not filing the means test form.

More, if the absence of the means test form were the only reason for the dismissal of the prior case, the debtor could have moved for and easily obtained an extension of the time to file the means test form. There is no evidence that he attempted to obtain such an extension and he makes no effort to address his failure to ask for an extension in the instant motion.

Finally, the court will deny the request for relief under 11 U.S.C. § 362(j). The debtor is asking the court to declare that the stay will not terminate as to property of the estate "or actions not taken in relation to a debt."

But, when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates in its entirety on the 30th day after the second petition date. Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011); see also 11 U.S.C. § 362(c)(3)(A).

5. 14-22127-A-7 GERZAIN NUNEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
DVW-1 — 3-24-14 [13]
21ST MORTGAGE CORPORATION VS.

**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, 21st Mortgage Corporation, seeks relief from the automatic stay as to a real property in Tracy, California. The movant purchased the property at a pre-petition foreclosure sale, on February 14, 2014. The debtor filed the instant petition on March 2, 2014.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with an

unlawful detainer action against the debtor in state court. The parties are to go to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

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

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

6. 09-43132-A-7 TSAR
GJH-3

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
3-10-14 [139]

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

Hughes Law Corporation, attorney for the trustee, has filed its second interim motion for approval of compensation. The requested compensation consists of $53,356.50 in fees (substantially reduced by the movant) and $4,499.82 in expenses, for a total of $57,856.32. The compensation relates solely to the litigation over creditor Lisa Taylor's $2,385,520 proof of claim, consisting of civil rights and wrongful termination claims asserted against TSAR. The debtor's insurer, Monitor Liability Managers, which provides coverage for the defense of majority of the claims asserted by Ms. Taylor, will reimburse the estate for this compensation, less up to an aggregate $15,000 deductible. The coverage is also subject to a reservation of rights as to wage and hour claims and punitive damages.

J. Michael Hopper, the trustee of the bankruptcy estate of Ms. Taylor responds, seeking a "confirmation of the extent of Monitor's reservation of rights and the terms of TSAR Trustee's reimbursement agreement with Monitor." Mr. Hopper contends that this estate and Monitor "may have competing interests" because of Monitor's reservation of rights provision. The movant has filed a reply.

This motion covers the period from January 1, 2012 through January 31, 2014 (the services relating to the prior interim award were from December 4, 2009 through December 31, 2011 - excluding services pertaining to the proof of claim filed by Lisa Taylor). All services in this motion pertain to the proof of claim filed by Lisa Taylor. The court approved the movant's employment as the trustee's attorney on December 8, 2009.

In performing its services, the movant charged hourly rates of $205 (reduced from as much as $230 an hour) and $245 (reduced from as much as $380 an hour).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing the proof of claim and related causes of action, (2) negotiating to resolve claims, (3) negotiating with Monitor about coverage for defense of the claims, (4) compiling information for defense of the claims and objecting to the proof of claim, (5) preparing for and attending mediation of the claims, (6) preparing various pleadings pertaining to the objection, (7) attending court hearings, and (8) communicating with the trustee about the resolution of the proof of claim.

The court is denying without prejudice the compensation of the trustee's special counsel, Gordon & Rees, because G&R's services are inadequately described. Because of the lack of detail in special counsel's fee motion, the court cannot determine whether and to what extent, if any, G&R's services are duplicative of the services provided by the movant. The movant and G&R have been working on the same litigation, the objection to Ms. Taylor's proof of claim. Given this, the court cannot grant the movant's compensation at least until the court is satisfied with the description of services provided by G&R.

Finally, Mr. Hopper's response is not helpful to the resolution of this motion. Whether Monitor fully or only partially reimburses the TSAR estate, this will not change the benefit of the services to the bankruptcy estate. The movant has been assisting the trustee in objecting to Ms. Taylor's $2,385,520 proof of claim. The court fails to see how full or partial reimbursement by Monitor will alter the outcome of this motion.

7. 09-43132-A-7 TSAR
MPO-1

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
3-17-14 [147]

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

Gordon & Rees, special counsel for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of $33,036.50 in fees and $4,048.40 in expenses, for a total of $37,084.90. The compensation relates solely to the litigation over creditor Lisa Taylor's $2,385,520 proof of claim, consisting of civil rights and wrongful termination claims asserted against TSAR. The debtor's insurer, Monitor Liability Managers, which provides coverage for the defense of majority of the claims asserted by Ms. Taylor, will reimburse the estate for the subject compensation, less up to an aggregate $15,000 deductible. The requested compensation covers the period of January 1, 2013 through December 31, 2013. The court approved the movant's employment as the trustee's special counsel on June 4, 2013. Docket 75. The movant charged hourly rates of $205 and $245.

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 motion will be denied because it makes an inadequate effort to describe the services provided by the movant and it does not state how much time was allocated to each category of services provided. Docket 147. The motion merely says: "All of the hours billed relate to services in analyzing, investigating, attempting to resolve, and objecting to Ms. Taylor's claim." Docket 147 at 2. This is an inadequate description of services pursuant to which $33,036.50 in fees are being sought.

Without a more detailed description of services, the court cannot determine the reasonableness and necessity of the services and cannot determine whether and to what extent, if any, the movant's services were duplicative of the services provided by the trustee's general counsel.

Finally, even if the motion adequately described the services provided by the movant, the court would not approve any compensation for services rendered prior to April 23, 2013. The order approving the movant's employment was entered over six months after the start of the services for which the movant

seeks compensation. The services for which the movant seeks compensation started on January 1, 2013, whereas the order approving its employment was not entered until June 3, 2013.

And, the order does not say that the employment was approved retroactively. Docket 75.

More, the motion seeking the approval of the movant's employment specifically asks that the movant's employment be approved retroactively only as of April 23, 2013. Docket 65 at 6. "Trustee requests that, since Gordon & Rees began providing services on or after April 23, 2013, employment be determined to apply retroactively, starting on April 23, 2013."

Docket 65 at 5.

8. 13-31638-A-7 DONNA DE QUILLETTES — MOTION TO SELL
DMW-1 — 2-25-14 [16]

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

The chapter 7 trustee requests authority to sell "as is" and "where is" for $4,100 the estate's interest in a 2005 GMC Envoy with approximately 90,000 to David Finkelstein. The property has a value of $60,000. The trustee is not asking for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

9. 14-21747-A-7 BRYON PROSPERI — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 3-24-14 [11]
AMERICAN HONDA FINANCE CORP. VS.

**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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2008 Honda Accord. The movant has produced evidence that the vehicle has a value of $10,375 and its secured claim is approximately $17,109.

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 April 2, 2014. And, the vehicle has been surrendered to the movant.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral 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 has possession of the vehicle and it is depreciating in value.

10. 13-36161-A-7 JAY/LISA HUMISTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-2
PROVIDENT FUNDING ASSOCIATES, L.P. VS. — 3-21-14 [32]

**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, Provident Funding Associates, seeks relief from the automatic stay as to a real property in Fairfield, California. The property has a value of $320,000 and it is encumbered by claims totaling approximately $443,458. The movant's deed is in first priority position and secures a claim of approximately $405,461.

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 31, 2014.

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.

11. 14-20373-A-7 MARYLOU'S HOME CARE, L.L.C. MOTION TO APPROVE COMPENSATION OF TRUSTEE
DNL-2 3-17-14 [48]

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

The chapter 7 trustee seeks the approval of $3,525 in fees and $14.50 in expenses, for a total of $3,539.50, for her work in this case, which was dismissed on February 27, 2014 on an order to show cause issued due to the debtor's failure to file petition documents.

The U.S. Trustee has filed a limited opposition, contending that the motion does not discuss the application of the limits on trustee compensation as prescribed by 11 U.S.C. § 326(a).

The trustee has filed a reply, contending that in a dismissed case the trustee's compensation is not limited by the formula of 11 U.S.C. § 326(a).

The court agrees with the trustee that when a chapter 7 case is dismissed due to no fault of the trustee, the compensation formula of 11 U.S.C. § 326(a) does not apply and the trustee's compensation does not have to be based on estate distributions.

"The limitations on trustee compensation in s 326(a) should not apply when funds are returned to the debtor because of a dismissal. Where the trustee has rendered services the debtor will be unjustly enriched, upon dismissal, unless the trustee is compensated. Bankruptcy courts have exercised their powers by conditioning the return of property to the debtor upon payment of compensation to the trustee."

In re Flying S Land & Cattle Co., Inc., 23 B.R. 56, 58 (Bankr. C.D. Cal. 1982); see also In re Hages, 252 B.R. 789, 795 (Bankr. N.D. Cal. 2000) (citing Flying S Land with approval in the context of chapter 7 trustee compensation after conversion of the case to chapter 13).

When the case was dismissed, on February 27, the court reserved jurisdiction over compensation motions by the trustee and estate professionals, to be heard no later than 45 days from February 24, 2014. Docket 40. This motion is being heard on April 7, 42 days after February 24.

In this case, there were no distributions to creditors prior to when the case was dismissed and the trustee is holding $2,390 in estate funds. As there have been and there will be no distributions to creditors by the estate, the

trustee's compensation cannot be granted on the basis of 11 U.S.C. § 326(a), given that such compensation is based "upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims." 11 U.S.C. § 326(a).

On the other hand, if the funds on hand with the trustee are merely turned over to the debtor, the debtor will be unjustly enriched because the trustee has already rendered services.

That is why the court is persuaded the trustee is entitled to reasonable compensation for her services to the estate. The trustee reviewed the petition documents filed by the debtor, investigated the debtor's business affairs and assets, inspected the debtor's facility, and communicated with the U.S. Trustee and her counsel about administration issues.

She is seeking to be compensated at the hourly rate of $250 for herself and $75 for an employee, Eric Husted.

The court concludes that the hourly rates are reasonable and that the compensation is for actual and necessary services rendered (from January 16, 2014 until February 11, 2014) in the administration of this estate. The motion will be granted.

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| 12. | 13-35475-A-7<br>DNL-5 | JOSE JIMENEZ AND MARIA GONZALEZ | MOTION TO CONVERT CASE TO CHAPTER 13<br>3-11-14 [95] |

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

The debtors are asking the court to convert their case to chapter 13.

The chapter 7 trustee opposes conversion, contending that the debtors: have not filed a chapter 13 plan, have removed a $258,400 unsecured claim in favor of Bank of America from Schedule F without explanation, have not explained how they will be able to make payments on a 100% plan, have removed their payroll deductions from their Amended Schedule I, and Mr. Jimenez's income appears to be grossly overstated.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $383,175 and noncontingent, liquidated, secured debts of less than $1,149,525. 11 U.S.C. § 109(e).

While the debtors are not required to file a chapter 13 plan with their conversion motion and are not required to establish plan feasibility on the conversion motion, the debtors must still show that they will have at least some disposable income to confirm a plan.

In this case, in spite of the amendments to Schedules I and J, the court is not convinced that the debtors have any disposable income to confirm a chapter 13 plan. The court is not convinced that Mr. Jimenez's income as stated in Amended Schedule I is correct. Amended Schedule I states that his monthly income is $3,569 and does not account for any payroll deductions.

On the other hand, the trustee has produced Mr. Jimenez's pay advice from November 2013, covering the last week of that month, listing a net income for that week of only $458.76. Docket 113. In other words, even assuming Mr. Jimenez is able to work 52 weeks a year, his net monthly income is far less than $3,569. His monthly income averages $1,987.96 (($458.76 x 52 weeks) / 12 months).

Further assuming that Mrs. Gonzalez's income is as stated in Amended Schedule I, $841 - which is difficult for the court to accept as no payroll deductions are listed for her either - their total monthly income would be only $2,828.96, less than their reduced expenses of $2,886 listed in Amended Schedule J. Docket 82.

Hence, the debtors will have no disposable income whatsoever to confirm any chapter 13 plan. The court concludes then that they are not eligible for chapter 13 relief. Accordingly, the motion will be denied.

13. 13-33582-A-7 RIVER CITY CAR WASH LLC — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
JDM-3 — 2-28-14 [94]

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

Dudugjian & Maxian, attorney for the debtor in possession, has filed his first and final motion for approval of compensation. The requested compensation consists of $13,286 in fees and $1,243 in expenses, for a total of $14,529. This motion covers the period from October 21, 2013 through February 4, 2014. The court approved the movant's employment as the attorney for the debtor on December 12, 2013. In performing its services, the movant charged hourly rates of $120, $300, and $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) preparing schedules and statements not filed on the petition date, (2) communicating with the debtor about various issues, (3) attending and representing the debtor at the IDI and the meeting of creditors, (4) attending court hearings, (5) responding to stay relief motions, (6) reviewing a three-day notice and unlawful detainer complaint from Wells Fargo Bank, (7) preparing answer to Wells Fargo Bank's unlawful detainer complaint, (8) negotiating cash collateral use issues with the creditor, (9) preparing and prosecuting a motion for use of cash collateral, and (10) preparing and filing employment and compensation motions.

The court will not approve any compensation relating to the movant's unlawful detainer and cash collateral motion services as the movant has not explained how or why those services benefitted the bankruptcy estate.

More, the court is perplexed at how the movant's unlawful detainer services could have benefitted the estate, given that they pertained to a real property

which had been foreclosed pre-petition.

Even if the court had an adequate explanation that the movant's unlawful detainer services benefitted the estate, the subject motion is devoid of evidence establishing a reasonable hourly rate for such services. The movant charged the same hourly rates for the unlawful detainer work as it charged for all bankruptcy work. But, bankruptcy hourly rates are not necessarily reasonable for unlawful detainer work.

The cash collateral use motion services did not benefit the estate either, as the court never even held a hearing on that motion. The court denied the motion because it was deficient - it did not include any evidence. Docket 78. Before the motion could be refiled or reset for hearing, the court converted the case to a chapter 7 proceeding. Docket 88.

As to the remainder of the services provided by the movant, 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.

***THE FINAL RULINGS BEGIN HERE***

14. 14-22106-A-7 RENEE HARPER — ORDER TO SHOW CAUSE 3-14-14 [12]

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

This order to show cause was issued because the debtor did not pay the petition filing fee of $306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on March 14, 2014. No prejudice has resulted from the delay.

15. 13-35811-A-7 RICHARD WILLIAMS — MOTION TO AVOID JUDICIAL LIEN 2-21-14 [12]
CLR-1
VS. TRIDENT INVESTMENT CORP.

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

The debtor served the motion on Trident Investment Corporation without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

Finally, even though the debtor has served Anthony Galyean, counsel for Trident, unless the attorney agreed to accept service, service was improper. See In re Villar, 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

16. 13-31715-A-7 THE BROILER, INC. — MOTION TO APPROVE COMPENSATION OF AUCTIONEER 3-10-14 [50]
DPW-1

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the 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.

West Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,111.50 in fees and $0.00 in expenses. This motion is for a sale completed on February

6, 2014. The court approved the movant's employment as the trustee's auctioneer on January 17, 2014. The requested compensation is based on a 10% commission and reimbursement of transportation and storage expenses.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of kitchen equipment, restaurant furniture, and miscellaneous office equipment.

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

17. 13-35416-A-7 OSCAR DIAZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 2-25-14 [19]
THE BANK OF NEW YORK MELLON VS.

**Final Ruling:** The motion will be dismissed as moot because the stay was dissolved when the case was dismissed on March 25, 2014. See 11 U.S.C. § 362(c)(2)(B). The motion is not seeking retroactive relief from stay or relief under 11 U.S.C. § 362(d)(4).

18. 14-20125-A-7 MICHAEL TAPLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 2-28-14 [19]
CITIMORTGAGE, INC. VS.

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

The motion will be granted.

The movant, Citimortgage, Inc., seeks relief from the automatic stay as to a real property in Stockton, California. The property has a value of $122,603 and it is encumbered by claims totaling approximately $150,083. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 14, 2014.

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.

19. 13-35131-A-7 LAWRENCE WILLIAMS AND CAROLINE KEHOE
GW-1
VS. INVESTMENT RETRIEVERS, INC.
MOTION TO AVOID JUDICIAL LIEN
3-7-14 [24]

**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 debtors in favor of Investment Retrievers, Inc. for the sum of $15,613.39 on December 20, 2012. The abstract of judgment was recorded with El Dorado County on February 19, 2013. 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). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $414,000 as of the date of the petition. The unavoidable liens total $472,005 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100 in Schedule C.

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

20. 14-20038-A-7 JENNIFER HARK
LET-1
NATIONSTAR MORTGAGE, LLC VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-14 [16]

**Final Ruling:** The motion will be dismissed without prejudice because the motion was served on the debtor at an incorrect address, on Sagewood Lane. The

debtor changed her address on February 19, listing a new address on Riverview Avenue. Docket 13.

21. 14-21862-A-7 ADRIAN DELGADILLO — MOTION TO COMPEL ABANDONMENT 3-6-14 [9]
WRF-1

**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. 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.

22. 13-35381-A-7 MANUEL/MIRELLA MERCADO — MOTION TO AVOID JUDICIAL LIEN 3-6-14 [16]
MOH-1
VS. BUTTE COUNTY CREDIT BUREAU

**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 Manuel Mercado in favor of Butte County Credit Bureau for the sum of $3,234.83 on July 9, 2013. The abstract of judgment was recorded with Butte County on August 1, 2013. That lien attached to the debtor's residential real property in Orland, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $256,691 as of the date of the petition. The unavoidable liens total $263,356 on that same date, consisting of a first mortgage for $226,527 in favor of Bank of America and second mortgage for $36,829 in favor of Umpqua Bank. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000 in Schedule C.

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).