UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 1, 2015 at 10:00 a.m.

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

5, 8, 9, 10

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

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

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

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

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

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

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 29, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 15, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 22, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 14-26626-A-7 SAEED BALAZI — MOTION TO AVOID JUDICIAL LIEN
DPR-1 — 4-21-15 [27]
VS. WINDRIFT COMPANY, INC.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Windrift Company for the sum of $84,405.54 on July 19, 2007. The abstract of judgment was recorded with Solano County on August 13, 2007. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied because the debtor has not established entitlement to his $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 29.

2. 14-26626-A-7 SAEED BALAZI — MOTION TO AVOID JUDICIAL LIEN
DPR-2 — 4-22-15 [31]
VS. AMERICAN EXPRESS TRAVEL RELATED SERVICES, INC.

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of American Express Travel Related Services Company, Inc. for the sum of $4,798.14 on April 7, 2008. The abstract of judgment was recorded with Solano County on May 6, 2008. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied because the debtor has not established entitlement to his $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 33.

3. 14-26626-A-7 SAEED BALAZI — MOTION TO AVOID JUDICIAL LIEN
DPR-3 — 4-22-15 [37]
VS. UNIFUND CCR PARTNERS

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of $5,294.75 on February 12, 2009. The abstract of judgment was recorded with Solano County on June 18, 2009. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied because the debtor has not established entitlement to his $175,000 exemption claim in the property. The debtor must establish

entitlement to the exemption even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 39.

4. 14-26626-A-7 SAEED BALAZI — MOTION TO AVOID JUDICIAL LIEN
DPR-4
VS. COLLINS JUDGMENT RECOVERY SERVICES — 4-22-15 [43]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Windraft Company for the sum of $142,119.43 on July 19, 2007. The judgment was subsequently assigned to Collins Judgment Recovery Services. An abstract of the judgment was recorded with Solano County on May 29, 2014. That lien attached to the debtor's residential real property in Fairfield, California. The debtor is seeking avoidance of the lien under 11 U.S.C. § 522(f).

Raymond Collins (dba Collins Judgment Recovery Services) opposes the motion, contending that the lien should not be avoided because the mortgage on the property "was modified or transferred without our consent as a junior lien holder." Docket 52.

The motion will be denied because the debtor has not established entitlement to his $175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely objection to the exemption. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). See Docket 45.

5. 10-47342-A-7 JOANNE PILLAY — MOTION TO AVOID JUDICIAL LIEN O.S.T.
SLE-8
VS. CAPITAL ONE BANK — 5-25-15 [81]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $5,006.03 on May 28, 2010. The abstract of judgment was recorded with Sacramento County on September 27, 2010. That lien attached to the debtor's residential real property in Sacramento, 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 $109,080 as of the petition date. Dockets 83 & 1. The unavoidable liens totaled $109,000 on that same date, consisting of a single mortgage in favor of Indymac Federal Bank. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $80.00 in Schedule C. Docket 1.

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).

6. 14-29045-A-7 BLL-3 — WILLIAM/GERALDINE ACKERMAN — MOTION TO SELL 5-4-15 [44]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $30,000 the estate's interest in a vacant lot of land in Yuma, Arizona. The trustee also asks for approval of the payment of the real estate commission. Property taxes will be paid from escrow. There are no other encumbrances against the property. The trustee estimates that the estate will net $27,111.14.

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

The motion will be denied for several reasons. First, the motion does not identify the buyer. The court should not have to search through the exhibits to the motion to find out the name of the buyer.

Second, the supporting declaration to the motion is unsigned. Docket 47. As a result, the declaration is inadmissible.

Third, the motion says nothing about the tax consequences from the sale. The court needs to know whether and to what extent the estate will incur taxes from the sale, before determining whether the sale is in the best interest of the creditors and the estate.

Fourth, the motion does not identify the realtor for whom the trustee is seeking authority to pay a commission. The motion also does not indicate whether the commission will be shared with the buyer's broker, if any, and says nothing about the date and terms of employment of the estate's realtor. Accordingly, the motion will be denied.

7. 15-21850-A-7 BHS-2 — A.L.L. GROUPS, INC. — MOTION TO SELL 5-4-15 [40]

Tentative Ruling: The motion will be granted in part.

The chapter 7 trustee requests authority to sell for $13,500 (plus costs of sale, including, among others, transfer and escrow fees) the estate's unencumbered interest in a type 21 off-sale general liquor license (license no. 530484) to Cirgadyne, Inc. The sale is "as is" and without warranties. The trustee also asks 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. The court will waive the 14-day period of Rule 6004(h).

The court will not grant authority to the trustee to pay unknown tax liens because the court does not have evidence of any liens in the record. The court needs to know the amount(s) of any such liens before it can determine whether authority to pay them is warranted.

8. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION TO AVOID JUDICIAL LIEN
RAC-4
VS. GLOBAL ACCEPTANCE CREDIT COMPANY, L.P. — 5-18-15 [45]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against Debtor Roderick Won in favor of Global Acceptance Credit Company LP for the sum of $44,370.83 on January 9, 2012. The abstract of judgment was recorded with Sacramento County on May 14, 2012. 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 $450,000 as of the petition date. Dockets 47 & 48. The unavoidable liens totaled $849,141 on that same date, consisting of a first mortgage in favor of Nationstar for $594,718 and a second mortgage in favor of Real Time Resolutions for $254,423. Dockets 47 & 48. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 47 & 48.

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. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION TO AVOID JUDICIAL LIEN
RAC-5
VS. DCFS TRUST — 5-18-15 [55]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against Debtor Roderick Won in favor of DCFS Trust for the sum of $36,621.05 on December 27, 2012. The abstract of judgment was recorded with Sacramento County on May 29, 2013. 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 $450,000 as of the petition date. Dockets 57 & 58. The unavoidable liens totaled $849,141 on that same date, consisting of a first mortgage in favor of Nationstar for $594,718 and a second mortgage in favor of Real Time Resolutions for $254,423. Dockets 57 & 58. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 57 & 58.

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).

10. 14-29159-A-7 RODERICK/SHIRLEY WON — MOTION TO AVOID JUDICIAL LIEN
RAC-6
VS. GIOVANNI AND PINA TOCCAGINO — 5-18-15 [50]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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.

A judgment was entered against the debtors in favor of Giovanni and Pina Toccagino for the sum of $32,800 on September 26, 2011. The abstract of judgment was recorded with Sacramento County on January 10, 2012. 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 $450,000 as of the petition date. Dockets 52 & 53. The unavoidable liens totaled $849,141 on that same date, consisting of a first mortgage in favor of Nationstar for $594,718 and a second mortgage in favor of Real Time Resolutions for $254,423. Dockets 52 & 53. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Dockets 52 & 53.

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. 12-38363-A-7 WILLIAM ST CLAIR — MOTION TO SELL
BLL-4 — 5-1-15 [233]

Tentative Ruling: The motion will be denied without prejudice.

The chapter 7 trustee requests authority to sell for $85,000 the estate's interest in four vacant lots of land in Butte County, California. The trustee also asks for approval of the payment of a 6% real estate commission to the estate's realtor, KW Commercial, North State.

The properties are subject to two unidentified (in the motion) judicial liens, that have been released, and a mortgage. Apparently, the trustee has entered into a carve-out agreement with the mortgagee. The trustee estimates that the estate will net $22,166 from the sale.

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

The motion will be denied for several reasons. First, the motion does not identify the buyer. The court should not have to search through the 66 pages of exhibits to discover the identity of the buyer.

Second, the motion does not provide sufficient detail of the terms of the carveout agreement between the estate and the mortgagee. For instance, the body of the motion does not even identify the mortgagee. While the court cannot be certain, the mortgagee appears to be referenced in the prayer for relief as the Money Brokers. Docket 233 at 5-6.

The motion says nothing about the mortgagee's original claim. There is no information about the date or amount of the claim. The court cannot determine, as a result, whether the carveout agreement is in the best interest of the estate and the creditors.

Third, the motion does not ask that the court approve the carveout agreement. The court is uncertain how it can approve the sale unless it approves the carveout agreement, as the benefit for the estate from the sale hinges on implementation of the carveout agreement.

Fourth, the motion does not provide sufficient information about the judicial lien holders. There is no information about the identity of the lien holders, the dates and amounts of their claims, or explanation of how partial satisfactions of judgment release both claims in full. This information should be in the motion. Accordingly, the motion will be denied.

12. 11-34464-A-7 STUART SMITS — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1 — 4-28-15 [307]
PENNYMAC HOLDINGS, L.L.C. VS.

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

The movant, Pennymac Holdings, L.L.C., seeks relief from the automatic stay as to real property in Sacramento, California.

Given the entry of the debtor's discharge on June 13, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the

property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The motion will be denied because the court does not have evidence of value for the property that is the subject of this motion. The motion contends that the value of 166 Mills Road, Sacramento, California is $250,000 based on the debtor's statement in Schedule A.

However, the only property listed in Schedule A is 161 Mills Road, Sacramento, California. Docket 17. While the debtor has assigned a $250,000 value to that property in Schedule A, 161 Mills Road is not 166 Mills Road. Those are different properties.

The court then does not have evidence of value for 166 Mills Road. And, the court cannot determine whether there is equity in the property and whether the movant's interest in the property is adequately protected. Hence, the motion will be denied as to the estate.

13. 15-20865-A-7 JOHN/MERRIE HOLMAN — OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION 4-17-15 [23]

Tentative Ruling: The objection will be overruled.

Creditors Rodney and Shirley Brown object to the trustee's report of no distribution, arguing that the debtors were untruthful about their assets and liabilities.

The Rodneys contend that the debtors did not pay them over $20,000 in rent; the debtors received a mobile home as an inheritance, which asset was not disclosed in their schedules even though it was sold in December 2014; the debtors owned a travel trailer whose sale was not disclosed; and the debtors own a large screen TV that was not listed along with the debtors' other household items in Schedule B.

The trustee contends that he is satisfied about the veracity of the debtors' schedules and statements. The trustee is not swayed by the objection to amend his report of no distribution. His contentions are supported by the evidence produced from the debtors in response to the objection. Specifically, the debtors point out that the mobile home was inherited by their son and not by them. John Holman's mother left the home to their son, Jonathan, who received the net proceeds from the sale of the home, approximately $16,075. Docket 64.

Further, the debtors were never able to sell their 1977 travel trailer, as it was in poor condition. Conversely, they had to pay $400 for the trailer to be removed from their residence. Docket 64.

As to the TV, a 52" Sharp Aquos model, it was purchased in 2009 and today's value is approximately $200.

The court is satisfied with both the trustee's and the debtors' explanations of the Rodneys' contentions. The court will not compel the trustee to administer the debtors' six-year old TV set, even if it was not properly scheduled. The value of the TV is nominal and, even if sold, the proceeds will not be sufficient to pay even the estate's administrative expenses.

Finally, to the extent the Rodneys are complaining about the debtors' discharge and/or dischargeability of debt owed to them, the court does not resolve such questions on a motion or in connection with the trustee's report. Such matters require an adversary proceeding which has not been filed and is now too late to file. See Fed. R. Bankr. P. 7001(4), (6). The objection will be overruled.

14. 15-20865-A-7 JOHN/MERRIE HOLMAN — AMENDED OBJECTION TO EXEMPTIONS
4-24-15 [32]

Tentative Ruling: The objection will be overruled.

Creditors Rodney and Shirley Brown object to all of the debtors' exemptions, arguing that the debtors had no right to increase their debts within two years prior to filing for bankruptcy; complaining that the debtors did not pay over $20,000 in rent, even though they purportedly had the ability to do so; and questioning the absence of information about the assets addressed in the court's ruling on the Rodneys' objection to the trustee's report of no distribution, which ruling is incorporated here by reference.

In addition to the foregoing, in their original objection filed on April 17, 2015 (Docket 25), the Rodneys refer to property that have been claimed as exempt, including:

- cash on hand,
- checking and savings accounts (#2682),
- checking accounts (#1619),
- account held by adult son,
- household goods and furnishings at residence,
- household goods and furnishings in storage,
- debts owed to the debtors, including a tax refund, and
- "automobiles, trucks, trailers, and other vehicles."

The Rodneys assert that "[a]dditional investigation and documentation will be necessary to determine if these properties should be exempt, we believe the amounts listed are not accurate." Docket 25.

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

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

The original objection, which was supplemented by the instant amended objection, is timely as it was filed within 30 days after the meeting of creditors concluded on March 19, 2015. The original objection was filed on April 17, 2015. Docket 25.

Rights to exemptions of property are determined as of the date the petition is filed. In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

The objection will be overruled for several reasons.

First, the court adjudicates objections to specific exemptions. The instant objection does not address specific exemptions. Instead, it argues against broad categories of exemptions. The court will not speculate about the specific exemptions to which the Rodneys are objecting. For instance, the reference to "Automobiles, trucks, trailers, and other vehicles" is ambiguous. Docket 25.

Second, none of the contentions in the objection are proper bases for disallowance of any exemptions. There is nothing precluding the debtors from incurring debt within the two years prior to the filing for bankruptcy and then claiming exemptions. The failure to pay a debt is not basis for disallowing exemptions. While it may be grounds for objecting to the debtors' discharge or seeking non-dischargeability of specific debt owed by the debtors, the debtors' failure to pay rent to the Rodneys is not basis for disallowance of any exemptions.

As to the assets addressed in the Rodneys' objection to the trustee's report of no distribution, the court adopts its ruling on that objection, delineating why the Rodneys' contentions as to those assets have no merit.

The mobile home was not inherited by the debtors but by their son. Docket 64. The debtors were never able to sell their 1977 travel trailer, as it was in poor condition. Docket 64. The TV, a 52" Sharp Aquos model, was purchased in 2009 and today's value is approximately $200. The TV is listed as "TVs" in both Schedules B (item 4) and C. Docket 14. The objection will be overruled.

Third, the objection is devoid of any admissible evidence. Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections."

A claim of exemption is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Under Rule 4003(c), once an exemption has been claimed, the objecting party has the burden to prove that the exemption is improper. Carter at 1029 n.3; Cerchione at 548; Gonzales v. Davis (In re Davis), 323 B.R. 732, 736 (B.A.P. 9th Cir. 2005).

"Once the debtor claims an exemption on her bankruptcy schedules, 'the objecting party has the burden of proving that the exemptions are not properly claimed.' Fed. R. Bankr. P. 4003(c). Thus, in this case, the trustee had the burden to show that debtor had not properly claimed the exemption."

Davis at 736.

This means that the objecting party has both the burden of production, *i.e.*, to produce evidence in support of the objection (also known as the burden of going forward) and the burden of persuasion. Carter at 1029 n.3; Cerchione at 548.

The Rodneys have not met their burden of going forward or their ultimate burden of persuasion. The objection contains no admissible evidence. The attachments

to the objection are not authenticated by a declaration. Fed. R. Evid. 901(a). At best, the statements in the attachments are inadmissible hearsay. Fed. R. Evid. 802. And, the Rodneys are only generally questioning the merits of the debtors' exemptions. "Additional investigation and documentation will be necessary to determine if these properties should be exempt, we believe the amounts listed are not accurate." Docket 25.

The objection also violates Local Bankruptcy Rule 9014-1(d)(6), which requires that every motion and objection contain admissible evidence substantiating the factual assertions by the movants.

The lack of admissible evidence is separate and independent basis for overruling the objection.

Finally, even if this objection had merit, the debtors filed Amended Schedule C on May 19, 2015, making the objection moot as to their original exemptions. Docket 74.

15. 15-20865-A-7 JOHN/MERRIE HOLMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
RBB-3 — 5-1-15 [48]
RODNEY AND SHIRLEY BROWN VS.

Tentative Ruling: The motion will be denied.

Creditors Rodney and Shirley Brown seek relief from the automatic stay to obtain financial information from the debtors in a state court action (Case No. 20697), in an effort to enforce a $10,205 pre-petition judgment entered against the debtors in December 2014.

The motion will be denied.

First, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Second, this is a chapter 7 case where the debtors' debt owed to the movants will be discharged. It is a pre-petition debt and there is no pending action under 11 U.S.C. § 523. And, the May 4, 2015 deadline for filing such actions has passed.

Even if the motion were supported by admissible and probative evidence, the movants have established no basis for the granting of relief from stay. The motion will be denied.

16. 15-20865-A-7 JOHN/MERRIE HOLMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
RBB-4 — 5-1-15 [46]
RODNEY AND SHIRLEY BROWN VS.

Tentative Ruling: The motion will be denied.

Creditors Rodney and Shirley Brown seek relief from the automatic stay with respect to appears to be a pending pre-petition state court action (Case No. 20696) against the debtors.

The motion will be denied.

First, the motion is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides that "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

Second, the motion provides insufficient information about the pending state court action or what the movants are seeking to do in that action. This is a chapter 7 case where the debtors' pre-petition debts will be discharged. The court notes that there is no pending action under 11 U.S.C. § 523 and/or 727. And, the May 4, 2015 deadline for filing such actions has passed.

Even if the motion were supported by admissible and probative evidence, the movants have established no basis for the granting of relief from stay. The motion will be denied.

17. 15-20485-A-7 JOSEPH/MALOURDES SPINALI — OBJECTION TO EXEMPTIONS
SLC-1 — 4-29-15 [15]

Tentative Ruling: The objection will be sustained.

The trustee objects to the debtors' exemption of a 2013 Honda Accord vehicle under Cal. Civ. Proc. Code § 703.140(b)(11)(D), which provides for the exemption of:

"The debtor's right to receive, or property that is traceable to, any of the following:

. . .

(D) A payment, not to exceed twenty-four thousand sixty dollars ($24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent."

The court disagrees with the trustee that Cal. Civ. Proc. Code § 703.080 applies. Under that statute:

"(a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.

(b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case."

The statute is "[s]ubject to any limitation provided in the particular exemption." This means that the "property that is traceable to" language of section 703.140(b)(11)(D) supercedes the tracing rules of section 703.080.

Nevertheless, the court does not have evidence from the debtor that the funds

used to purchase the subject vehicle are traceable to the personal injury settlement proceeds. The court has evidence from the debtors of the funds they received from the personal injury settlement, $153,902.41 received in May 2013 (Docket 24), but it has no evidence of when, how and by what means they purchased the vehicle. The trustee should not be expected to have to prove a false negative. It is the debtors that have information pertinent to the tracing and they have not produced it. Accordingly, the exemption will be disallowed and this objection will be sustained.

FINAL RULINGS BEGIN HERE

18. 15-20500-A-7 THOMAS/CARRIE LIEBRICH — MOTION TO AVOID JUDICIAL LIEN
MDA-1 — 4-16-15 [15]
VS. CITIBANK, N.A.

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank. Docket 19; see also Fed. R. Bankr. P. 7004(h).

While the debtor served Citibank's attorney, unless the attorney agreed to accept service, service was improper. Docket 19; see, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

19. 14-30201-A-7 SHARON GILLAM — MOTION TO APPROVE COMPENSATION OF AUCTIONEER
JMH-2 — 5-3-15 [29]

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 $1,992 in fees and $735 in expenses, for a total of $2,727. This motion is for a sale completed on April 9, 2015. The court approved the movant's employment as the trustee's auctioneer on February 19, 2015. The requested compensation is based on a 12% commission and reimbursement of transportation, storage and DMV documentation 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 a fifth wheel travel trailer. The gross sales price was $16,600.

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

20. 15-22201-A-7 DON/LESLIE PARSONS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 4-29-15 [14]
BANK OF AMERICA, N.A. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will be dismissing the motion as moot, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot but the absence of the automatic stay will be confirmed.

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

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. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On February 28, 2013, the debtors filed a chapter 13 case (case no. 13-22793). But, the court dismissed that case on March 16, 2015 due to a request by the debtors. The debtors filed the instant case on March 19, 2015. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on April 18, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that 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).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on April 18, 2015, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

21. 15-22701-A-7 SEEMA SIDDIQUI — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 4-27-15 [10]
WELLS FARGO BANK, N.A. VS.

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

unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Roseville, California. The property has a value of $561,000 and it is encumbered by claims totaling approximately $1,077,641. The movant's deed is in first priority position and secures a claim of approximately $842,641.

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 May 6, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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.

22. 12-28413-A-7 F. RODGERS CORPORATION
LMW-1

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
4-27-15 [810]

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.

As a final note, the subject stipulation is only between the movants and the debtor. The chapter 7 trustee is not a party to the stipulation. This is not a chapter 11 case, as suggested by the motion papers, in referring to the debtor as a debtor in possession. Hence, if the court were to approve the instant stipulation, only the stay as to the debtor would be lifted. The stay as to the estate would remain in place.

23. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO SELL, APPROVE COMPENSATION FOR REALTOR AND APPROVE SECOND AMENDMENT TO CARVEOUT AGREEMENT
HCS-7 5-4-15 [179]

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

The motion will be granted.

The chapter 7 trustee requests authority to sell for $7.5 million the estate's interest in approximately 71 acres of a real property in Tracy, California to Seton Pacific Company, free and clear of the lien of U.S. Bank.

The property that is the subject of this motion contains multiple assessor parcel numbers. Interested parties should review the motion for the specific parcel numbers encompassed by this property.

The trustee asks the court to make a good faith finding under 11 U.S.C. § 363(m), for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission; 5% commission of the gross sales price to Jim Martin of Lee & Associates (to be split equally with the buyer's realtor).

The trustee also asks the court to approve a second amended carveout agreement among the estate, U.S. Bank and Piff & Associates, enabling the sale free and clear of U.S. Bank's mortgage, which exceeds the proposed purchase price, and free and clear of Piff's lis pendens.

The original carveout agreement with U.S. Bank was approved by the court on March 3, 2014 (Dockets 62 & 71). It allowed the estate to receive 10% of the gross sales price up to $850,000, allowed for the realtor commission to be paid at 5% of the gross sales price, and allowed for the payment of all amounts necessary to cover the closing costs on the sale. The remaining proceeds were

to be paid to U.S. Bank.

Under the approved original carveout agreement, the estate had until September 3, 2014 to sell the property. Although the trustee located a buyer for the property within that deadline, the trustee did not enter into the sales agreement until September 19, 2014. Nevertheless, U.S. Bank agreed to extend the sales period under the carveout agreement, requiring closing of the sale by December 31, 2014. As part of the amendment to the carveout agreement, U.S. Bank and the trustee also entered into a stipulation for the lifting of the stay as of January 1, 2015, which stipulation the court approved on October 9, 2014. Docket 127.

Although the trustee obtained court approval of the sale with the buyer for the property it had located, that sale fell through. Seton Pacific emerged as a buyer, however, requiring the trustee once again to seek another amendment of the carveout agreement with U.S. Bank. After some negotiations, U.S. Bank agreed to allow the sale to Seton Pacific in spite of its existing carveout agreement with the estate.

This version of the carveout agreement gives the estate $650,000 in addition to the realtor commission, sales costs, and the outstanding property taxes as of April 10, 2015.

The trustee is asking the court to approve this amendment to the carveout agreement.

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 property is encumbered as follows: (1) outstanding real property taxes for $243,415; and (2) U.S. Bank holds the first mortgage on the property with an original principal amount of $16.7 million; U.S. Bank's proof of claim is for approximately $15,953,642.30 and only $7.5 million of the proof of claim is claimed to be secured - the remainder is unsecured.

The above encumbrances will be paid from escrow, except that U.S. Bank's mortgage will be paid at a reduced amount, in accordance with the terms of the latest version of the carveout agreement.

The sale will generate substantial proceeds, from an otherwise overencumbered property, 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.

The sale is not subject to overbids. This is in the best interest of the creditors and the estate as Seton Pacific is a last-minute buyer, without which the estate would realize nothing from a sale because U.S. Bank is on the verge of foreclosing on the property. And, there have been no other offers for the purchase of the property. The one prior offer was submitted by a buyer that ultimately failed to perform.

Moreover, Seton Pacific has indicated that it is not willing to purchase the property if the sale would be subject to overbids. The court notes that the instant purchase price of $7.5 million is $200,000 higher than the purchase price of the buyer that failed to perform. Docket 153. The proposed purchase price also falls within the valuation range for the property, between $5 and $8 million, as established by the estate's realtor. Docket 186 ¶ 5.

Accordingly, the court will:

- Approve the proposed sale to Seton Pacific;

- Approve the second amended carveout agreement with U.S. Bank and Piff, and authorize the trustee to make all payments under the agreement to close the sale;

- Authorize payment of the 5% real estate commission;

- Waive the 14-day period of Rule 6004(h); and

- Make a finding under 11 U.S.C. § 363(m). The trustee and his professionals do not have connection or relationship with the buyer and the negotiations were conducted at arms-length, making this such a transaction.

Given U.S. Bank's consent to the sale, it will be approved as to U.S. Bank under 11 U.S.C. § 363(f)(2).

24. 14-27722-A-7 KIMBERLY KELLER — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HCS-3 — 4-30-15 [28]

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation is $6,000, reduced from $7,556 in fees and $106.96 in expenses. This motion covers the period from August 20, 2014 through the present. The court approved the movant's employment as the trustee's attorney on September 22, 2014. In performing its services, the movant charged hourly rates of $90, $225, $275, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) advising

the trustee about the recovery of assets, objecting to exemptions, and challenging claims, (3) seeking turnover of an annuity, (4) negotiating reduction of a claim allegedly secured by the annuity, (5) negotiating reduction of that secured claim, (6) negotiating reduction of a claim held by the U.S. Department of Education, (7) negotiating reduction of the debtor's exemption claim in the annuity, (8) preparing stipulation for payment of the reduced claims and obtaining court approval of the stipulation, and (9) 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.

25. 15-22924-A-7 JOHN MOORE — ORDER TO SHOW CAUSE 5-11-15 [17]

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

This order to show cause was issued because the debtor filed an Amended Master Address List on April 27, 2015, but did not pay the $30 filing fee. However, the debtor paid the fee on May 15, 2015. No prejudice has resulted from the delay.

26. 15-23027-A-7 ARIANA POWELL — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-30-15 [10]
PD-1
FIRST TECH FEDERAL CREDIT UNION 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, First Tech Federal Credit Union, seeks relief from the automatic stay with respect to a 2010 Toyota Corolla. The vehicle has a value of $5,739, per Schedule B, and its secured claim is approximately $12,671.

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 May 19, 2015. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

27. 14-24430-A-7 JOE CAMARA GARCIA
HCS-5

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
5-4-15 [55]

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

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation is $10,000, reduced from $10,845.50 in fees and $297.91 in expenses. This motion covers the period from June 27, 2014 through the present. The court approved the movant's employment as the trustee's attorney on July 14, 2014. In performing its services, the movant charged hourly rates of $90, $150, $225, $295 and $315.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) reviewing petition documents, (2) advising the trustee about the recovery of assets, objecting to exemptions, and challenging claims, (3) assisting the trustee with the sale of a quad, a dirt bike, trailers, and jet skis, (4) preparing and prosecuting a motion to sell, (5) negotiating with the debtor's former wife about her community debt claim against the debtor and the debtor's alimony claim against her, (6) preparing the settlement, (7) preparing and prosecuting a motion for approval of the settlement, and (8) preparing and filing employment and compensation motions.

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

28. 14-27937-A-7 BETTY SMITH
DMB-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
4-27-15 [71]

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.

Cowan & Brady, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $3,060 in fees and $71.24 in expenses, for a total of $3,131.24. This motion covers the period from August 26, 2014 through March 9, 2015. The court approved the movant's employment as the trustee's attorney on September 10, 2014. In performing its services, the movant charged hourly rates of $100 and $325.

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) advising the trustee about the general administration of the estate, (3) assisting the estate with the sale of a real property, (4) preparing and prosecuting motion for approval of the sale, and (5) preparing and filing employment and compensation motions.

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

29. 15-21850-A-7 A.L.L. GROUPS, INC.
BHS-1

MOTION TO EMPLOY AND TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
5-4-15 [35]

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.

The trustee requests approval to employ The Law Office of Barry Spitzer as counsel for the estate. Spitzer will assist the estate with the sale of the estate's interest in a liquor license, will assist with the resolution of lien issues, and will provide other services pertaining to the general administration of the estate. The proposed compensation is a flat fee of $2,000, inclusive of all out-of-pocket costs. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

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

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

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

30. 10-43854-A-7 GEORGE HAITH — MOTION FOR DENIAL OF DISCHARGE 4-9-15 [45]
UST-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 debtor, the trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The U.S. Trustee moves for denial of the debtor's discharge pursuant to 11 U.S.C. § 727(a)(8), which provides that the court shall grant the debtor a discharge unless the debtor has been granted discharge under this section in a case commenced within eight years before the date of the filing of the instant petition.

An objection to discharge pursuant to section 727(a)(8) does not require an adversary proceeding. See Fed. R. Bankr. P. 7001(4).

The debtor filed a chapter 7 case, Case No. 08-32260-C-7, on August 29, 2008 and he received a discharge in that case on December 16, 2008. The debtor filed the subject bankruptcy case, Case No. 10-43854, on September 7, 2010, approximately two years after the filing of Case No. 08-32260. Docket 47,

David Decl.; Docket 49. As the debtor filed the instant bankruptcy case less than eight years after the filing of the bankruptcy case in which he received a discharge, he is not eligible to receive a discharge in the instant bankruptcy case. Accordingly, the motion will be granted.

31. 15-22357-A-7 TRACY JAMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 4-24-15 [14]
WEDGEWOOD APARTMENTS, L.L.C. 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, Wedgewood Apartments, L.L.C., seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in April 2015. Prior to defaulting, however, the debtor filed this bankruptcy case on March 25, 2015.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the rent due from April 2015 until the present.

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 parties to go to state court in order for that court 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 will be awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

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

32. 11-28263-A-7 HAYWOOD BEAIRD — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
ADJ-3 — 4-23-15 [36]

Final Ruling: The motion will be dismissed without prejudice because there is no proof of service indicating that all creditors were served with the motion as required by Fed. R. Bankr. P. 2002(a)(6). The proof of service for the

motion indicates that only the debtor, the debtor's counsel and the U.S. Trustee were served with the motion. Docket 41.

33. 15-23264-A-7 KEN PRICE — ORDER TO SHOW CAUSE 5-6-15 [11]

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 $335, 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 May 6, 2015. No prejudice has resulted from the delay.

34. 15-20865-A-7 JOHN/MERRIE HOLMAN — ORDER TO SHOW CAUSE 5-15-15 [67]

Final Ruling: The order to show cause will be discharged and the stay relief motion will be adjudicated.

Creditors Rodney and Shirley Brown filed a motion for relief from the automatic stay on May 1, 2015 (DCN RBB-4), but they did not pay the filing fee for the motion, in the amount of $176, at that time. Dockets 46 & 67. However, the creditors paid the fee on May 20, 2015. No prejudice has resulted from the delay.

35. 15-20865-A-7 JOHN/MERRIE HOLMAN — ORDER TO SHOW CAUSE 5-15-15 [68]

Final Ruling: The order to show cause will be discharged and the stay relief motion will be adjudicated.

Creditors Rodney and Shirley Brown filed a motion for relief from the automatic stay on May 1, 2015 (DCN RBB-3), but they did not pay the filing fee for the motion, in the amount of $176, at that time. Dockets 48 & 68. However, the creditors paid the fee on May 20, 2015. No prejudice has resulted from the delay.

36. 15-22372-A-7 ANIBAL/MELISSA RUBINA — MOTION FOR RELIEF FROM AUTOMATIC STAY 4-28-15 [11]
APN-1
SANTANDER CONSUMER USA, 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, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2004 Mitsubishi Endeavor. The movant has produced evidence that the vehicle has a value of $6,450 ($3,734 per Schedule B) and its secured claim is approximately $17,424. Docket 13.

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. 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.

37. 14-27980-A-7 GKUBI SMART — MOTION TO EXTEND DEADLINE 4-23-15 [128]
HSM-8

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

The motion will be granted.

The trustee requests a 90-day extension, from April 24, 2015 to July 23, 2015, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was April 24, 2015. Docket 125. The motion was filed on April 23, 2015. Thus, the motion complies with the temporal requirements of the rule.

The trustee has noticed inconsistencies and omissions in documents the debtor has filed with the court. Specifically, the debtor has not listed his anticipated tax refund of $5,000 on Schedule B. Also, after several times stating under the penalty of perjury that he does not own a real property, including in his schedules and in an application for waiver of the filing fee,

the debtor filed Amended Schedules A and D, listing a real property with what appears to be over $100,000 in equity.

More, the debtor admitted in February 2015 that his basis for a homestead exemption claim under Cal. Civ. Proc. Code § 704.730(a)(3) has no foundation, as his spouse's disability does not qualify under the statute. He has also represented to the trustee that he will be seeking dismissal of the case.

Nevertheless, no Amended Schedule C has been filed to update the debtor's disqualification for the section 704.730(a)(3) exemption and no motion to dismiss has been filed yet. The trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to July 23, 2015.

38. 14-27980-A-7 GKUBI SMART — OBJECTION TO EXEMPTIONS
HSM-9 — 5-4-15 [132]

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

The trustee objects to the debtor's $135,967.76 exemption claim under Cal. Civ. Proc. Code § 704.730 in a real property in Tracy, California.

The last day for the filing of exemption objections was fixed by an April 21, 2015 order of the court, for May 5, 2015. Docket 124. This objection is timely as it was filed on May 4, 2015.

Cal. Civ. Proc. Code § 704.730 provides that:

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

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor

or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

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

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

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

Rights to exemptions of property are determined as of the date the petition is filed. In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

The debtor's $135,967.76 December 5, 2015 exemption in the property under Cal. Civ. Proc. Code § 704.730 must be pursuant to subsection (a)(3)(B) of the statute because only subsection (a)(3) allows for an exemption claim above $100,000.

More, the debtor has made statements in this case indicating that his exemption claim is pursuant to Cal. Civ. Proc. Code § 704.730(a)(3)(B) and it is based on his "non-filing spouse" being "a disabled person" for purposes of that exemption. Docket 74 at 2.

Nevertheless, on February 18, 2015, the debtor's counsel told the trustee's counsel that the debtor's wife is not disabled within the meaning of the exemption under Cal. Civ. Proc. Code § 704.730(a)(3)(B), "and that a motion to dismiss this case was anticipated to be filed." Docket 134 at 2; Fed. R. Evid. 801(d)(2)(A) (excluding statements by an opposing party, offered against that party, from the hearsay definition).

In other words, the debtor has admitted to not having basis for claiming an exemption under Cal. Civ. Proc. Code § 704.730(a)(3). Given this admission, the court will disallow the exemption claim in the property.

The court will disallow the exemption claim also because the debtor has not produced evidence to the trustee, despite repeated requests and promises to do so, of the debtor's factual basis for the exemption. This case has been pending since August 5, 2014 and the debtor has done nothing to produce evidence to support the exemption. The trustee should not be expected to have to prove a false negative. It is the debtor that has information pertinent to the exemption and he has not produced it.

The debtor's lack of response to this objection is also taken as acknowledgment that he has no basis for the objection. The objection will be sustained.