UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 15, 2015 at 10:00 a.m.

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

4, 6, 11, 13, 14

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 JULY 13, 2015 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 29, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 6, 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. 13-35308-A-7 DOROTHY PARENT — MOTION FOR SUBSTITUTION OF PARTY
LCB-8 — 4-28-15 [325]

Tentative Ruling: The motion will be denied without prejudice.

Dorothy Swendeman, through her purported agent in fact Cynthia Swendeman, moves for the court to substitute her in the place of Robert Swendeman, her late spouse. Mr. Swendeman passed away on July 7, 2011, over two years prior to the filing of this case. Since the case was filed on December 2, 2013, attorney Laurence Blunt has filed extensive litigation, several appeals, and two adversary proceedings, as counsel for Robert Swendeman.

The motion will be denied. Fed. R. Civ. P. 25(a)(1), as made applicable here by Fed. R. Bankr. P. 7025, provides that:

"**(1) Substitution if the Claim Is Not Extinguished.** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record."

While Rule 25 governs the substitution of deceased parties in federal court, state law controls who is the proper party successor in interest and whether and to what extent a claim is extinguished by the party's passing. In re Baycol Products Litigation, 616 F.3d 778, 788 (8th Cir. 2010); see also Robert v. Wegmann, 436 U.S. 584, 598 (1991).

As argued by the oppositions, the movant has not produced admissible evidence of Cynthia Swendeman's authority to execute a declaration on behalf of Dorothy Swendeman in support of the request for the substitution of Dorothy Swendeman in the place of the deceased Robert Swendeman. This has nothing to do with whether the movant has substantively complied with California's successor in interest requirements. The court does not reach that issue in this ruling. The issue here is that the Federal Rules of Evidence prohibit the admission of hearsay statements as evidence. Fed. R. Evid. 802.

The movant has not even briefed the issue.

Cynthia Swendeman's declaration states that "Dorothy B. Swendeman has authorized me, her daughter, Cynthia E. Swendeman, to execute this declaration on her behalf." Docket 328 at 1. According to Cynthia Swendeman, "Dorothy B. Swendeman did not execute this declaration because she is elderly." Docket 328 at 2. In her declaration, Cynthia Swendeman also purports that she is "acting as attorney in fact for Dorothy B. Swendeman pursuant to a durable power of attorney executed by Dorothy B. Swendeman on March 8, 2013 before a notary public." Docket 328 at 2.

The court does not understand why being "elderly" disqualifies Dorothy

Swendeman from executing her own declaration in support of this motion. Being elderly is not a medical condition that automatically incapacitates or disqualifies Dorothy Swendeman from signing her own declaration. Without her declaration, Cynthia Swendeman's statement that "Dorothy B. Swendeman has authorized me, her daughter, Cynthia E. Swendeman, to execute this declaration on her behalf" is inadmissible hearsay. The phrase "has authorized me" refers to an out-of-court statement sought to be admitted for the truth of the matter asserted therein. Fed. R. Evid. 801(a)-(c).

Cynthia Swendeman also claims to be acting on behalf of Dorothy Swendeman based on a durable power of attorney that is not in the record. Thus, the reference to Cynthia Swendeman having such authority from a power of attorney is also hearsay, *i.e.*, an out-of-court statement in the power of attorney, sought to be admitted for the truth of the matter asserted therein. Fed. R. Evid. 801(a)-(c). As such, the court does not have admissible evidence of Cynthia Swendeman's authority to act on behalf of Dorothy Swendeman.

Every power of attorney defines the scope of the authority being granted to the agent. Without reviewing the actual power of attorney upon which Cynthia Swendeman is basing her authority to act for Dorothy Swendeman, the court cannot determine whether Cynthia Swendeman is exercising authority actually granted to her.

Also, while Cynthia Swendeman claims to have personal knowledge of the facts in her declaration, this is based solely on the fact that she is one of the children of Robert and Dorothy Swendeman. This is insufficient foundation of her personal knowledge. Being one of three children of Robert and Dorothy Swendeman does not necessarily mean that Cynthia Swendeman was privy to all of the family's affairs, especially those concerning Mr. Swendeaman's business and his assets. Docket 328; see also Fed. R. Evid. 602 (prescribing that "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter").

Further, even if the court did have a power of attorney from the movant, authorizing Cynthia Swendeman to act on behalf of Dorothy Swendeman, a power of attorney does not permit for Cynthia Swendeman to testify on behalf of Dorothy Swendeman. There is no power of attorney exception to the hearsay rule.

And, even if the court were to grant the requested substitution, this does not cure the defect in Robert Swendeman's proof of claim filed with this court on April 25, 2014. POC 10. As Mr. Swendeman passed away on July 7, 2011, before the bankruptcy case was filed on December 2, 2013. Any authority that Mr. Blunt had to act for Mr. Swendeman ended upon his death. The fact that Mr. Swendeman was deceased at the time of the proof of claim filing means that Mr. Blunt, the now former counsel of Mr. Swendeman, did not have authority to do anything on behalf of Mr. Swedenman.

Thus, even if the court were to substitute Dorothy Swendeman in the place of Robert Swendeman, that will not cure this defect.

Furthermore, the fact that the state court may have granted substitution to the movant in a state court action against the debtor, based upon this deficient evidence, is not basis for this court to recognize Cynthia Swendeman's authority to act on behalf of Dorothy Swendeman. This court must make its own, separate and independent determination of whether Cynthia Swendeman is qualified to act on behalf of Dorothy Swendeman.

Moreover, the movant's reference to the state court action came with her reply to the oppositions, once again depriving parties in interest from an opportunity to respond to a newly advanced contention. And, all this court has in the record is the state court's tentative ruling on a motion to substitute parties. There is no order from the state court. The court cannot tell from the record what happened at the June 5, 2015 hearing on the motion.

Finally, the contention by the movant that she is seeking substitution only with respect to a proof of claim filed by Robert Swendeman is unacceptable. If the movant is the successor for Robert Swendeman she is his successor as to everything.

2.	13-35308-A-7 DOROTHY PARENT LCB-9 DOODA LIMITED PARTNERSHIP VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-28-15 [317]

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

The movant, Dooda L.P., seeks relief from the automatic stay to report a crime purportedly committed by the debtor, and aided and abetted by Michael Brady, Michael Vinding, and the Brady & Vinding General Partnership.

Given the entry of the debtor's discharge on March 11, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the automatic stay remains in place. However, the automatic stay does not prevent anyone from reporting a crime committed by the debtor or anyone else. 11 U.S.C. § 362(b)(1) (providing that the commencement or continuation of a criminal action or proceeding is not stayed by 11 U.S.C. § 362(a)); Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1085-86 (9th Cir. 2000) (en banc) (holding that the automatic stay does not enjoin criminal prosecutions, even if the underlying purpose is debt collection); In re Hartung, 258 B.R. 210, 213-15 (Bankr. D. Mont. 2000) (holding that the automatic stay does not prevent the reporting of a crime); Nash v. Clark County District Attorney's Office (In re Nash), 464 B.R. 874, 882-83 (B.A.P. 9th Cir. 2012) (holding that criminal prosecutions do not violate the discharge injunction).

As such, as to the estate, the motion will be denied.

The court will not grant the movant a "comfort" order. "'[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. at 96 . . . (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97. . . ."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001).

3. 15-23116-A-7 ERI SANCHEZ — MOTION FOR ORDER AVOIDING WAGE GARNISHMENT AND PERMITTING TURNOVER OF GARNISHED FUNDS
MRE-1 — 5-6-15 [11]

Tentative Ruling: The motion will be granted in part.

A judgment was entered against the debtor in the approximate amount of $21,000 in 2008, in favor of Enterprise Rent A Car Company of Sacramento. Pursuant to the judgment, a writ of execution and an wage garnishment was executed, resulting in the Sacramento Sheriff's Department garnishing $493.22 from the debtor's employer, Bell Heating and Air, prior to the petition filing date of April 16, 2015. Those funds are currently held by the Sacramento Sheriff.

The debtors are seeking to avoid the lien that led to the levy of the funds.

The lien will be avoided pursuant to 11 U.S.C. § 522(f)(1)(A). The debtor listed the funds, $2,000, in their Schedule B. Dockets 1 & 14. The debtor claimed an exemption of $3,000 in the garnished funds pursuant to Cal. Code Civ. Proc. § 703.140(b)(5) in their Schedule C. Dockets 1 & 14.

The respondent holds a judicial lien created by the issuance of a writ of execution for the levy of the funds. 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 funds and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

While the court will avoid the lien, it will not compel the Sacramento Sheriff to turn over the funds held to the debtor, as such relief requires an adversary proceeding. See Fed. R. Bankr. P. 7001(1).

4. 15-23638-A-7 LOUIS/LETICIA RODRIQUEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JMA-8 — 5-19-15 [17]
SFC SUNSET ROCKLIN INVESTORS, L.L.C. 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, SFC Sunset Rocklin Investors, L.L.C., seeks relief from the automatic stay as to real property in Rocklin, California.

The movant is the legal owner of the property and the debtors leased it from the movant. The debtors defaulted under the lease agreement in March 2015.

The movant served the debtors with a three-day notice to pay or quit on March 10, 2015. After expiration of the notice, the movant filed an unlawful detainer action against the debtors on March 18, 2015. The debtors filed an answer in the unlawful detainer action and a trial was set for April 24, 2015. At the trial, the movant and the debtors entered into a stipulation to resolve the action. Under the stipulation, the debtors agreed to vacate the property by May 4, 2015 and pay the movant $3,252.88. The debtors filed this bankruptcy case on May 1, 2015.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay the rent due from March 2015 onward. Also, the debtors' tenancy interest in the property terminated upon expiration of the three-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

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

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

5. 09-32444-A-7 DOUGLAS/CARLA CARR — MOTION TO AVOID JUDICIAL LIEN
TGC-3
VS. DENNIS SPIELBAUER — 4-30-15 [42]

Tentative Ruling: The motion will be granted.

A judgment was entered against the debtor Doug Carr in favor of Dennis Spielbauer for the sum of $36,900 on May 11, 2009. The abstract of judgment was recorded with El Dorado County on June 8, 2009. That lien attached to the debtor's residential real property in El Dorado, California. The debtor seeks avoidance of the lien.

Dennis Spielbauer opposes the motion:

(1) arguing that he did not receive notice of this bankruptcy case as the debtors "purposefully failed to list [his] address properly on the original matrix" (Docket 47 at 2); also arguing that the debtors purposefully listed him as an unsecured creditor as they should have been aware of the recording of the abstract of judgment;

(2) contending that the debt owed to Mr. Spielbauer was incurred by fraud and should not be subject to discharge and thus the lien cannot be avoided;

(3) questioning "the legitimacy of the wildcard exemption" and the valuation of the property as of the petition date, June 17, 2009, as opposed to the date

when this motion was filed, April 30, 2015; and

(4) requesting an evidentiary hearing.

Docket 47.

First, even if the respondent's lien was not properly listed in the schedules and the respondent did not receive notice of this bankruptcy proceeding, this may impact dischargeability of the respondents' claim. See 11 U.S.C. § 523(a)(3). Yet, it does not impact the debtor's ability to avoid the lien under section 522(f).

11 U.S.C. § 522(c) prescribes that:

"*Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except--*

"*(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);*

"*(2) a debt secured by a lien that is--*

"*(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and*

"*(ii) not void under section 506(d) of this title; or*

"*(B) a tax lien, notice of which is properly filed;*

"*(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or*

"*(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).*"

Even if the respondent's claim is nondischargeable, the debtor is not precluded from avoiding the lien. The respondent's lien does not arise as a tax, customs duty, or domestic support obligation. See 11 U.S.C. § 523(a)(1), (5). The respondent is not "a Federal depository institutions regulatory agency." See 11 U.S.C. § 522(c)(3). And, the court has no evidence in the record that the debt owed to the respondent was incurred in connection with "financing an education at an institution of higher education." See 11 U.S.C. § 522(c)(4).

Hence, section 522(c), which makes exempt property liable for some debts enumerated in section 523(a), makes no reference to debts nondischargeable under section 523(a)(2), (a)(3), (a)(4), or (a)(6), allegedly of the type of debts that gave rise to the respondent's lien.

Further, the court has no evidence that the debtors actually knew of the recordation of the abstract of judgment, as of the petition date. In any event, listing the respondent's claim as unsecured, while it was secured, had no legal effect that somehow prejudiced the respondent. And, this is certainly not basis for denying an otherwise proper avoidance of a judicial lien.

Second, the opposition advances no legal basis for questioning the debtor's exemption claim in the property. It says nothing about why the exemption claim is invalid.

Third, the debtors' right to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the date of the petition and not some time post-petition as the respondent suggests.

Fourth, The court will not hold an evidentiary hearing as the opposition does not contain a separate statement of disputed material facts. Nor are there any apparent material disputed facts.

"*The opposition shall specify whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. Failure to file the separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c).*"

Local Bankruptcy Rule 9014-1(f)(1)(B).

Finally, turning to the merits of the motion, it will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $423,500 as of the petition date. Dockets 1 & 45. The unavoidable liens totaled $607,386.58 on that same date, consisting of outstanding property taxes in the amount of $7,918.08, outstanding HOA dues in the amount of $3,163.50, a first mortgage in favor of Wells Fargo Home Mortgage for $529,920, and a second mortgage in favor of Wells Fargo Bank for $66,385. Dockets 1 & 45. 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 1 & 45.

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. 14-25247-A-7 MANUEL VELASQUEZ — MOTION TO DISMISS DUPLICATE CASE
GEM-3 — 5-19-15 [32]

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 creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor requests dismissal of this case on the basis that he erroneously filed two cases. The other case is Case No. 14-25246. Given the erroneous filing of the two cases, this case (Case No. 14-25247) will be dismissed. No other relief will be granted.

7. 14-32147-A-7 THOMAS/CHERYL BENNETT — MOTION TO AVOID JUDICIAL LIEN
AFL-2
VS. PACE SUPPLY CORP. — 5-11-15 [67]

Tentative Ruling: The motion will be dismissed as moot.

A judgment was entered against Debtor Thomas Bennett in favor of Pace Supply Corp. for the sum of $151,382.68 on June 12, 2014. The abstract of judgment was recorded with Placer County on July 15, 2014. That lien attached to the debtor's residential real property in Roseville, California. The debtors are seeking to avoid the judicial lien.

Pace has filed an opposition to the motion, asserting that it has recorded a release of its judicial lien. Docket 81, Ex. A.

As Pace has recorded a release of its judicial lien, the motion will be dismissed as moot.

8. 14-32147-A-7 THOMAS/CHERYL BENNETT — MOTION TO AVOID JUDICIAL LIEN
AFL-3
VS. YELLOWSTONE CAPITAL WEST, L.L.C. — 5-11-15 [71]

Tentative Ruling: The hearing on the motion will be continued.

A judgment was entered against Debtor Thomas Bennett in favor of Yellowstone Capital West L.L.C. for the sum of $76,394.72 on June 6, 2014. The abstract of judgment was recorded with Placer County on July 18, 2014. That lien attached to the debtor's residential real property in Roseville, California. The debtors are seeking to avoid the judicial lien.

Yellowstone has filed an opposition to the motion, challenging the debtor's valuation of the property and seeking time to obtain its own valuation of the property.

The court will continue the hearing on the motion to allow Yellowstone to obtain its own appraisal of the property.

9. 08-26555-A-7 DESHON MCDANIEL
DDM-4
VS. A. TEICHERT AND SON, INC.

MOTION TO
AVOID JUDICIAL LIEN
5-18-15 [45]

Tentative Ruling: The motion will be denied.

A judgment was entered against the debtor in favor of A. Teichert & Son, Inc. for the sum of $6,134.23 on July 28, 2006. The abstract of judgment was recorded with Sacramento County on October 12, 2006. This bankruptcy case was filed on May 19, 2008.

The debtor asserts that the foregoing actions amounted to the creation of a lien that can be avoided under 11 U.S.C. § 522(f)(1).

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Section 522(f)(1)(A) permits the avoidance of judicial liens and section 522(f)(1)(B) permits the avoidance of nonpossessory, nonpurchase money security interests.

Debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the date of the petition and not some time post-petition as the creditor suggests.

The motion will be denied. It claims no impairment of exemptions in any property. The debtor owned no real property as of the petition date, meaning that there was no judicial lien on real property. Schedule A lists no interests in real property. Docket 1.

Also, there is no evidence with the motion of a judicial lien created against personal property.

Cal. Civ. Proc. Code § 697.520 provides: "A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010)."

Cal. Civ. Proc. Code § 697.510(a) provides: "A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

The motion contains no evidence of a notice of judgment lien filed with the California Secretary of State. Specifically, the court has no evidence that a notice of judgment lien was filed with the California Secretary of State with respect to the debtor's "household furnishings, household goods, wearing

apparel, appliances, books, animals, crops, musical instruments, or jewelry," which were allegedly claimed as exempt by the debtor. Docket 45 at 3.

The motion even misidentifies the specific exemptions claimed by the debtor in that personal property. The debtor's Schedule B identifies only household goods and furnishings with a value of $680 and clothing with a value of $150. Docket 1, Schedule B, items 4 & 6. This is inconsistent with the motion's contention that the "household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry" had a value of $4,380 and that the debtor claimed exemptions for their full value. Schedule B does not even list "appliances, books, animals, crops, musical instruments, or jewelry." Docket 1, Schedule B.

Further, the motion contains no evidence of a nonpossessory, nonpurchase money security interest in property either. Schedule D lists no secured claims either, much less voluntary liens on personal property. Docket 1, Schedule D.

Finally, the court does not avoid liens "against a person" because such liens do not exist. Liens attach to property and not individuals.

10. 10-45360-A-7 CLAYTON/PENNY MITCHELL — MOTION TO AVOID JUDICIAL LIEN
CAH-3
VS. DISCOVER BANK
5-7-15 [31]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Clayton Mitchell in favor of Discover Bank for the sum of $13,434.63 on April 6, 2010. The abstract of judgment was recorded with Sacramento County on September 1, 2010. That lien attached to the debtor's residential real property in Carmichael, California. The debtor seeks avoidance of the lien pursuant to 11 U.S.C. § 522(f).

The motion will be denied because the debtor amended Schedule C on May 7, 2015, the date this motion was filed, to change the exemption claim in the subject property, but the debtor did not serve the Amended Schedule C on any of the creditors and the trustee, informing them of the added exemption. Docket 30. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

11. 15-24161-A-7 SANDRA DEMAS — MOTION FOR RELIEF FROM AUTOMATIC STAY
RWD-1
JAMES CAPLIS VS.
5-29-15 [17]

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, James Caplis, seeks relief from the automatic stay as to real property in Carmichael, California.

The movant is the legal owner of the property and the debtor leased it from the movant. The debtor breached the lease agreement by subletting the property. The movant served the debtor with a three-day notice to quit on April 24, 2015. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on April 30, 2015. The debtor filed this bankruptcy case on May 22, 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 violated the terms of the lease agreement by subletting the property without authority from the movant. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on her pre-petition. 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 exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

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

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

12. 11-34464-A-7 STUART SMITS — MOTION TO ABANDON
BSA-1 — 5-20-15 [313]

Tentative Ruling: The motion will be denied without prejudice.

The trustee seeks to abandon the estate's interest in a real property on Mills Road in Sacramento, California.

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

The motion will be denied. It asserts that the property is over-encumbered because the mortgage and a lien in favor of Mr. Bardis exceed the value of the property. But, the court has been unable to find the amount of Mr. Bardis' lien in the motion record.

And, the motion relies solely on the value of the property according to zillow.com, approximately $683,000. Such valuation is hearsay and is inadmissible. Fed. R. Evid. 802. Nor is the valuation admissible under Fed. R. Evid. 702 and 703, which require qualifications and basis for the valuation.

As such, the trustee has not carried her burden of persuasion that the property is of inconsequential value or burdensome to the estate. Accordingly, the motion will be denied.

13. 15-23184-A-7 GUY/THERESA SCHOTT — MOTION TO COMPEL ABANDONMENT 5-22-15 [9]
SCG-1

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 creditors, 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 debtors request an order compelling the trustee to abandon the estate's interest in their flooring business, Schott's Hardwood Floors.

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.

According to the motion, the business assets include the business name (valued at $1.00), contractor's license (valued at $1.00), tools (valued at $6,765), El Dorado Savings bank account (8903) (with a balance of $2,400 as of the petition date), 1992 Chevy Cargo Van (valued at $400), and a receivable (valued at $4,600).

The assets have been claimed fully exempt in Schedule C. Dockets 1 & 12. Given the exemption claims, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

14. 15-23184-A-7 GUY/THERESA SCHOTT — MOTION TO COMPEL ABANDONMENT 5-22-15 [14]
SCG-2

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 creditors, 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 debtors request an order compelling the trustee to abandon the estate's interest in their Internet sales business, Jeans, Shoes and More.

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.

According to the motion, the business assets include the business name and inventory of used clothing and shoes (valued at $2,700), PayPal account (with a balance of $352 as of the petition date), and computer and printer (valued at $100).

The assets have been claimed fully exempt in Schedule C. Dockets 1 & 17. Given the exemption claims, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

15. 15-21888-A-7 STEPHEN ALESSI — MOTION TO SELL
BHS-2 — 5-15-15 [19]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell "as is" and "where is" for $13,638.93 ($42,000 value less claimed exemptions of $28,361.07) the estate's interest in a 1965 Chevrolet Corvette Stingray coupe to the debtor. The sale is subject to encumbrances, if any, although the debtor has represented that the vehicle is unencumbered. 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).

16. 14-32289-A-7 ROSE/RAYMOND RASH — MOTION TO RECONSIDER
MOH-3 — 5-21-15 [40]

Tentative Ruling: The motion will be denied without prejudice.

The debtors are seeking reconsideration of the court's May 18, 2015 denial without prejudice of their lien avoidance motion as to the lien of Unifund CCR Partners. Docket 38.

However, as the court denied the motion without prejudice, it does not need to reconsider it. It will consider the same motion anew.

A judgment was entered against Debtor Raymond Rash in favor of Unifund CCR Partners for the sum of $2,273.55 on July 31, 2003. The abstract of judgment was recorded with Butte County on September 23, 2003. That lien attached to the debtor's residential real property in Chico, California. The debtors are seeking avoidance of the lien.

The motion will be denied, again. The date for entry of the creditor's judgment in the recorded abstract of judgment is different from the date for entry of the judgment in the debtors' Schedule F. In the abstract, the date of judgment entry is July 31, 2003, whereas in Schedule F it is September 3, 2003. Docket 26.

Further, according to Schedule F, the renewal date for the judgment is beyond the 10-year validity period of the judgment. The judgment was entered on July 31, 2003 (per the abstract) or September 3, 2003 (per Schedule F), whereas renewal of the judgment took place on September 24, 2014 (per Schedule F), over 11 years after entry of the judgment. As such, the judgment giving rise to the lien is no longer valid, making the lien itself invalid and unnecessary to avoid.

These issues are not addressed by the motion. Thus, it will be denied without prejudice.

17. 14-28593-A-7 WILLIAM NAHORN
BHT-1
THE BANK OF NEW YORK MELLON TRUST CO., N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-11-15 [49]

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

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on January 7, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $80,000 and it is encumbered by claims totaling approximately $67,144. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is the only encumbrance against the property. This leaves approximately $12,856 of equity in the property.

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

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

The movant has an equity cushion of approximately $12,856. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee administers the estate and the case is closed. See 11 U.S.C. §

362(c)(1) & (c)(2)(A). At that point, the automatic stay will expire as a matter of law. The trustee filed a notice of assets on October 16, 2014.

Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate. The motion will be denied as to the estate.

THE FINAL RULINGS BEGIN HERE

18. 08-35602-A-7 JMH-1 — MUZIO BAKING COMPANY, L.L.C. — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 5-16-15 [150]

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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $8,980.50 in fees and $21.35 in expenses, for a total of $9,001.85. This motion covers the period from July 5, 2012 through April 10, 2015. The court approved the movant's employment as the estate's accountant on July 11, 2012. In performing its services, the movant charged hourly rates of $180, $190, $195, $200 and $300.

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 assisting the trustee with the preparation and filing of estate tax returns.

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

19. 15-22705-A-7 PD-1 — PETRE/ROBERTA CIOCAN BANK OF AMERICA, N.A. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-15-15 [10]

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, Bank of America, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of $99,219 and it is encumbered by claims totaling approximately $222,503. 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 May 27, 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.

20. 09-43509-A-7 RENOLFO/SOCORRO NAVARRO — MOTION TO AVOID JUDICIAL LIEN
BMV-4
VS. LYON FINANCIAL SERVICES, INC. — 5-5-15 [48]

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

The motion will be granted.

A judgment was entered against the debtor Renolfo Navarro in favor of Lyon Financial Services, Inc. for the sum of $33,448.08 on September 2, 2009. The abstract of judgment was recorded with Solano County on October 19, 2009. That lien attached to the debtor's real property in Vallejo, 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 $265,000 as of the petition date (October 29, 2009). Dockets 1, 31, 52. The unavoidable liens totaled $493,600 on that same date, consisting of a single mortgage in favor of Bank of America.

Dockets 1 & 51. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Dockets 32 & 52.

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).

21. 14-31810-A-7 MAHMOOD DEAN — MOTION TO APPROVE COMPENSATION OF AUCTIONEER
DPW-1 — 5-13-15 [43]

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 $2,823.48 in commissions and $3,262.50 in expenses, for a total of $6,085.98. This motion is for a sale completed on March 26, 2015. The court approved the movant's employment as the trustee's auctioneer on February 26, 2015. The requested compensation is based on a 12% commission and reimbursement of transportation ($1,887.50), storage ($850) and DMV registration searches and document preparation expenses ($525).

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

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

22. 14-24416-A-7 LELAND COMBS AND MICHAEL CHINN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-2 — 5-12-15 [49]
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 dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2012 Nissan Frontier vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on April 29, 2014 and a meeting of creditors was first convened on May 28, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 28. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on May 28, 2014, on the date of the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on May 28, 2014.

Nothing in section 362(h)(1), however, permits the court to issue an order

confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

23. 15-22028-A-7 DANIEL KING
PPR-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-15-15 [12]

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, Bank of America, seeks relief from the automatic stay with respect to a 2013 Nissan Sentra. The movant has produced evidence that the vehicle has a value of $10,725 and its secured claim is approximately $20,504.

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 22, 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.

24. 12-27029-A-7 THALIA SINGLETON
BHT-1
OCWEN LOAN SERVICING, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-14-15 [167]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The

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

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

The movant, Ocwen Loan Servicing, seeks relief from the automatic stay as to a real property in Sacramento, California.

Given the entry of the debtor's discharge on May 20, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $119,020 and it is encumbered by claims totaling approximately $179,809. The movant's deed is in first priority position and secures a claim of approximately $153,000.

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 March 22, 2015.

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

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

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

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

25. 07-26740-A-7 NAGARAJAN LAKSHMANAN
HCS-2

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
5-15-15 [180]

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 total compensation consists of $7,000, reduced from $15,385.50 in fees and $664.31 in expenses (for a total of $16,049.81). This motion covers the period from February 26, 2010 (but charges started May 18, 2010) through the present. The court approved the movant's employment as the trustee's attorney on June 8, 2010. In performing its services, the movant charged hourly rates of $195, $250, and $295.

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 and prosecuting motion to reopen the case, (2) preparing and prosecuting a Rule 2004 exam request, (3) assisting the estate with the settlement of claims against a single defendant in a lawsuit that the debtor originally failed to disclose, (4) preparing and prosecuting a motion for approval of the settlement, (5) responding to a motion to reconsider the approval of the settlement filed by the debtor, (6) preparing and prosecuting a motion for abandonment of other claims, (7) communicating with special counsel about recovery from the Stockton bankruptcy case, pursuant to a lawsuit the debtor filed against the City of Stockton in 2006, 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.

26. 07-26740-A-7 NAGARAJAN LAKSHMANAN
HCS-3

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
5-15-15 [186]

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.

Steven Schoonover, special counsel for the estate, has filed its first and final motion for approval of compensation. The requested total compensation consists of $516.55, reduced from $6,320 in fees. The services were provided between December 2006 and July 2012. This case was filed on August 24, 2007. After closing of the case on February 4, 2008, the case was reopened on May 26, 2010, for the trustee to administer undisclosed assets. The requested compensation is based on an hourly rate of $200.

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 consisted, without limitation, of: prosecuting a state court action on behalf of the debtor and then on behalf of the estate, against the City of Stockton, until the City filed its chapter 9 bankruptcy case in July 2012.

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.

27. 14-26441-A-7 MICHAEL/JEANETTE DELOZIER — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 5-12-15 [61]
JRR-2

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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $1,592 in fees and $0.00 in expenses. This motion covers the period from February 5, 2015 through May 6, 2015. The court approved the movant's employment as the estate's accountant on February 19, 2015. In performing its services, the movant charged hourly rates of $200 and $330.

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 assisting the trustee with the preparation of tax returns.

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

28. 13-29754-A-7 TIMOTHY/SHAWN POLI — OBJECTION TO CLAIM
MET-2
VS. MIDLAND CREDIT MANAGEMENT — 4-26-15 [61]

Final Ruling: The objection will be dismissed without prejudice because it was not served on the respondent claimant at the address in the proof of claim against which this objection is directed (claim no. 4). Docket 64.

Even if the objection did not have a service deficiency, it fails to allege the debtors' standing to object to a proof of claim. Their mere status as debtors is not sufficient. Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in his individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004). For instance, is this a surplus estate such that if this claim is disallowed, the debtor would receive a dividend? Are there nondischargeable claims such that disallowance of this claim will increase the dividend to the nondischargeable claims and thereby reduce the debtor's remaining nondischargeable liability?

29. 15-22576-A-7 NAOMI LUNA — MOTION TO AVOID JUDICIAL LIEN
JCK-1
VS. CENTRAL STATE CREDIT UNION — 5-8-15 [10]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Central State Credit Union, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

Pursuant to 11 U.S.C. § 101(35)(B), the term "insured depository institution" includes an insured credit union. Thus, Fed. R. Bankr. P. 7004(h) required service to be made upon the respondent by certified mail addressed to an officer of the credit union.

The proof of service accompanying the motion indicates that the notice was not served by certified mail and was not addressed solely to an officer of the respondent. Docket 14. It was addressed to "Manager, General Manager or Officer for Agent of Service of Process." Docket 14.

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

And, the court does not have evidence that any of the exceptions of Rule 7004(h) are applicable. Accordingly, the motion will be dismissed.

30. 15-22581-A-7 REMY SUGABO
JCK-1
VS. CITIBANK (SOUTH DAKOTA), N.A.

MOTION TO
AVOID JUDICIAL LIEN
5-8-15 [10]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Citibank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "Officer, a Managing or General Agent or any other agent authorized to receive service of process." Docket 13. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

31. 15-21888-A-7 STEPHEN ALESSI
BHS-1

MOTION TO
EMPLOY AND TO APPROVE COMPENSATION
OF TRUSTEE'S ATTORNEY
5-15-15 [14]

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 vehicle. The proposed compensation is a flat fee of $1,500, 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.

32. 13-28491-A-7 JAMES ENGLISH — MOTION TO AVOID JUDICIAL LIEN
TJW-2
VAN DE POL ENTERPRISES, INC. — 5-26-15 [145]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a *separate* proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.