UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 19, 2017 at 10:00 a.m.

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

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

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

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

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JULY 21, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 7, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 14, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

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

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

MATTERS FOR ARGUMENT

1. 08-37910-A-7 MARK JOCOY
DNL-12

MOTION FOR
ADMINISTRATIVE EXPENSES
5-26-17 [157]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee seeks standing authority to pay ongoing homeowner's association fees for the condominium real property in San Felipe, Mexico. The estate owns a 50% interest in the condominium. In addition to leasing the property, the trustee is also marketing it for sale. The HOA has sought ongoing HOA payments, pending sale of the property, as the trustee is leasing the property. The HOA is owed approximately $17,704.

11 U.S.C. § 503(b) provides that after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate.

The court has granted authority for the trustee to lease the condominium, given the anticipated extended marketing period for the property. The HOA fees cover common area maintenance expenses for the property, making them actual and necessary costs for preserving the condominium and the estate's interest in it. Thus, the court will authorize payment of ongoing HOA fees, as long as the trustee has court authority to be leasing the property.

11 U.S.C. § 363(b) allows the trustee to use, sell or lease property of the estate, other than in the ordinary course of business. Paying HOA fees is an integral part of any leasing administration of real property. Hence, the trustee may pay the subject HOA fees in conjunction with the estate's authority to lease the property. See also Docket 143 (ruling authorizing such relief in July 2016); but see Docket 144 (corresponding order authorizing more limited relief). The motion will be granted.

The court is granting no authority for the payment of pre-petition HOA fees.

2. 17-23215-A-7 STEVE CRISMOND

ORDER TO
SHOW CAUSE
5-25-17 [14]

Tentative Ruling: The petition will be dismissed.

When the petition was filed, the debtor did not pay the petition filing fee and did not apply to pay the fee in installments. The filing fee of $335 was due on May 11, 2017 and has not been paid yet.

3. 17-21936-A-7 SHAWN ATKINSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
YARMOHAMMAD SAFI VS. — 5-24-17 [29]

Tentative Ruling: The motion will be denied.

The movant, Yarmohammad Safi, seeks relief from the automatic stay as to real property in Manteca, California.

The motion will be denied because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions. See Docket 29. This violates Local Bankruptcy Rule 9014-1(d)(7), which provides that "[e]very 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(c)(4)."

Further, the court has no evidence that the amended notice of hearing, changing the hearing date from June 5 to June 19, was served on anyone. See Docket 33.

Finally, as pointed out in the court's May 25, 2017 order denying the movant's request for order shortening time, this is the second motion for relief from stay filed by the movant with respect to the same property. The creditor failed to appear at the hearing on the first motion. Despite the failure to appear, the first motion was denied on the merits and this second motion proves nothing that could not have been proven in connection with the first motion.

In other words, the movant has already had one opportunity to litigate his motion on the merits and he lost. The court sees no reason to permit the movant to relitigate the same motion. The court's ruling denying the prior motion follows below:

"The motion will be denied in part and dismissed in part.

"The movant, Yarmohammad Safi, seeks relief from the automatic stay as to real property in Manteca, California.

"The debtor opposes the motion, contending that she is current on her lease payments to the movant and that the movant is bound to a three-year lease agreement, expiring in October 2018.

"The motion will be dismissed as to the estate because the motion has not been served on the trustee. Docket 18 at 3.

"As to the debtor, the analysis is different. The movant is the legal owner of the property and the debtor leased it from the movant. The movant seeks relief from stay to proceed with an unlawful detainer action against the debtor. The movant states that he wants to sell the property.

"However, the motion does not say that the debtor is delinquent under the lease agreement. According to the debtor, she is current on rental payments to the movant. Moreover, the property is subject to a three-year lease agreement between the debtor and the movant. As such, the court finds no cause for the lifting of the stay. The motion will be denied as to the debtor."

Docket 21.

4. 17-23142-A-7 MISTY CLARK — MOTION TO

SLH-1 COMPEL ABANDONMENT
5-17-17 [10]

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks an order compelling the trustee to abandon the estate's interest in a real property in Rancho Cordova, California.

The trustee opposes the motion, pointing out that there is no evidence of the debtor's entitlement to the $175,000 exemption.

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

The debtor claims that the property has a value of $214,232.94 and it is subject to a secured claim in the amount of $115,709 and an exemption in the amount of $175,000.

But, the deadline for exemption objections has not passed. Parties in interest, including the trustee, have 30 days after the meeting of creditors has concluded to object to exemptions. Fed. R. Bankr. P. 4003(b)(1). The initial meeting of creditors in the case is set to take place on June 14, 2017.

Given that the deadline for exemption objections has not passed, the motion will be denied.

5. 17-22049-A-7 JAMES WIKEY MOTION TO
MOH-1 COMPEL ABANDONMENT
5-16-17 [13]

Tentative Ruling: The motion will be denied without prejudice.

The debtor requests an order compelling the trustee to abandon the estate's interest in his mortgage business, "California First Mortgage Co."

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

The motion will be denied.

The motion discusses only the business' "profitability" as an asset, in determining the value of the business. The motion says nothing about what tangible assets the business may own.

For instance, it says nothing about personal or real property assets. The court cannot assume that there are no such assets just because the motion is silent about them. The motion will be denied.

6. 16-22163-A-7 SYLVIA KINERSON
JDS-1

MOTION TO
DEEM CLAIM AN AMENDMENT TO AN
INFORMAL CLAIM
4-14-17 [56]

Tentative Ruling: The motion will be granted.

Creditor Mick Kinerson, administrator of the probate estate of Lawrence Edward Kinerson, seeks leave to have a late filed formal proof of claim filed on September 19, 2016, amend a timely filed informal proof of claim, filed on July 5, 2016. The informal claim is an adversary proceeding against the debtor (Adv. Pro. No. 16-2137) prior to the September 8, 2016 claims bar date. It seeks a determination that an obligation is nondischargeable.

The debtor opposes the motion, contending that the "Informal Proof of Claim[] is deficient for the same reasons that his Formal Proof of Claim is deficient." Docket 66 at 6.

An informal proof of claim does not determine does not establish the validity of the later filed formal proof of claim. The informal proof of claim permits the relation back of a late filed formal proof of claim. Once there is relation-back of the late filed proof of claim to the date when the informal proof of claim was filed, there is a presumption that the now timely formal proof of claim is valid. See 11 U.S.C. § 502(a). This presumption is subject to any substantive objection to the claim that might be made by a party in interest with standing to raise the objection.

The court's adjudication here is limited to whether the late formal filed proof of claim relates back to the date of the timely informal proof of claim.

"*The Ninth Circuit has two requirements for a document to qualify as an informal proof of claim:*

"*(1) the document 'must state an explicit demand showing the nature and amount of the claim against the estate,' and*

"*(2) the document must 'evidence an intent to hold the debtor liable.' Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9th Cir. 1985).*"

Spokane Law Enforcement Federal Credit Union v. Barker (In re Barker), 839 F.3d 1189, 1196 (9th Cir. 2016).

The movant's July 5, 2016 nondischargeability complaint makes it clear that the debtor owes a debt to the movant. The complaint asks that the debt to be declared nondischargeable. According to the complaint, the debt is based on a judgment entered against the debtor for intentional financial misconduct and elder abuse. The amount of the movant's claim is $425,000 plus interest. Part of the movant's claim has yet to be liquidated ny the state court. The complaint is clear that the movant intends to hold the debtor liable for the claim. Adv. Proc. No. 16-2137, Docket 1 at 3-5. As such, the requirements for relation back are met. The motion will be granted and the late-filed proof of claim will relate back to the July 5, 2016 date of the informal proof of claim.

The court strikes the handwritten pleading filed by the debtor on May 24, 2017. Docket 70. As the court made it clear when it continued the hearing on this motion from May 22, the record on this motion closed prior to the May 22 hearing. Docket 69.

Moreover, the debtor is represented by counsel in this case. In fact, her counsel had already filed a response to this motion. Docket 66. As such, the court will not accept direct communication from the debtor, without the prior consent of her counsel.

7.	16-22163-A-7	SYLVIA KINERSON	OBJECTION TO
	LT-2		CLAIM
	VS. MICK KINERSON		5-8-17 [62]

Tentative Ruling: The objection will be overruled.

The debtor objects to the September 19, 2016 proof of claim of Mick Kinerson as administrator of the probate estate of Lawrence Edward Kinerson, POC 3, arguing that the claim is untimely and lacks supporting documentation.

The objection will be overruled because the debtor has not alleged her standing to object to this claim.

Her mere status as a debtor is not sufficient. Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in her individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that she 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?

Further, the court has already resolved the untimeliness of the claim by granting Mick Kinerson's motion for the claim to relate back to the date an informal proof of claim was filed. The court incorporates here by reference its ruling on that motion, DCN JDS-1.

Finally, even if the court were to ignore the debtor's lack of standing, Mick Kinerson's proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

"Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant

to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The failure to attach a writing or documentation to a proof of claim is not a basis for disallowance, at least in this instance. Fed. R. Bankr. P. 3001(a) requires only *substantial* conformity to the appropriate Official Form and does not require that all supporting documents be attached to a proof of claim. The claim is sufficient to establish its prima facie validity.

Moreover, the informal proof of claim filed in the form of a section 523 complaint attaches the writing upon which Mick Kinerson's claim is based, namely, a lengthy state court ruling identifying misconduct of the debtor giving rise to the liability underlying the claim. Adv. Proc. No. 16-2137, Docket 1, Ex. A to Ex. A. Hence, the writing of which the debtor complains has been attached to Mick Kinerson's proof of claim.

To the extent the debtor is seeking documentation identifying more specifically the basis for the claim, as mentioned in the informal proof of claim (*i.e.*, the complaint), part of the claim remains unliquidated in the state court. Adv. Proc. 16-2137, Docket 1 at 4. The nondischargeability litigation by Mick Kinerson against the debtor is not over either. The parties will be appearing in court on June 21 for a trial-setting conference. See Adv. Proc. 16-2137, Docket 22.

And, according to Mick Kinerson, he has produced to the debtor all documents to support the proof of claim in the nondischargeability action discovery.

The prima facie validity of Mick Kinerson's proof of claim stands as there has been no evidence rebutting that validity. Complaining about a lack of documentation is not enough. The objection will be overruled.

8.	15-23164-A-7 DNL-7	JF MCCRAY PLASTERING, INC.	MOTION TO APPROVE COMPROMISE 4-18-17 [69]

Tentative Ruling: The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Shawn McCray, the debtor's former principal, resolving the estate's interest in proceeds from a receivable belonging to the debtor, some of which proceeds ($266,977.28) were transferred to Mr. McCray and were used by him in part to fund an IRA and pay off an obligation secured by his interest in real property in Citrus Heights, California.

Mr. McCray received $266,977.28 on account of the receivable from the debtor's general contractor at a community college project. The general contractor is holding another $36,567 on account of the receivable, pending the approval of this settlement.

Mr. McCray's interest in the real property was subject to an avoidance action by the trustee in his mother's chapter 7 case, pending in Department B. Pursuant to a settlement of that action, the interest of the mother's estate in the real property has been released.

Under the terms of the compromise, the transfer of the debtor's receivable proceeds will be avoided, and the estate will recover the real property (except for a shed and a freestanding bar on the property) and the final proceeds of the receivable held by the general contractor, for the benefit of the estate.

Mr. McCray will vacate the real property by May 31, 2017 and the trustee will sell it. The net proceeds from the sale will be distributed as follows: 60% to the estate and 40% to Mr. McCray.

In addition, the trustee will assign all claims of the debtor against Lathrop Construction Associates, Inc. Such claims in include, without limitation, causes of action pertaining to backdating of an Equipment Transfer Agreement between the debtor and Lathrop and pertaining to Lathrop improperly taking title to equipment owned by the debtor. If Mr. McCray chooses to prosecute the claims against Lathrop, the net proceeds from the claims will be divided as follows: 60% to Mr. McCray and 40% to the estate. Mr. McCray may settle the claims against Lathrop without the necessity for consent or authority from the estate. The estate and Mr. McCray will also exchange mutual releases.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. The settlement is equitable and fair given:

– Mr. McCray's evidence in the record that he transferred no funds into the IRA,

– the disabilities of both Mr. McCray and his spouse,

– that Mr. McCray has not worked for over two years,

– the trustee's recovery and eventual sale of the real property,

– that the trustee expects to recover for the estate at least approximately $155,000 from the sale of the property (60% of at least $258,500 in net sales proceeds),

– that the $155,000 figure approximates the amount Mr. McCray used to pay off the loan secured by the real property ($152,170.73),

– the estate's sharing in proceeds from potential prosecution of the claims against Lathrop by McMCray, and

– the inherent costs, risks, delay and inconvenience of further litigation.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. The motion will be granted.

Finally, the court rejects the opposition of Lathrop Construction Associates, Inc. It makes no sense. The subcontract agreement between the debtor and Lathrop prohibits solely the assignment of "this SUBCONTRACT" and "any amounts

due or to become due hereunder." Docket 74 at 2. The agreement does not prohibit the assignment of causes of action brought pursuant to the agreement. The court sees nothing in the opposition prohibiting the debtor or the trustee from transferring as part of a settlement or as part of a sale of a cause of action arising from the agreement.

The quoted language in the agreement is the boiler plate language prohibiting parties from assigning performance and receipt of funds due under the agreement. The trustee is not assigning performance and/or receipt of funds under the agreement. The agreement is no longer being performed. It has been terminated, rightfully or wrongfully. The debtor filed this chapter 7 bankruptcy case on April 17, 2015, over two years ago, and it has not been operating. The trustee is transferring causes of action arising from the agreement between the debtor and Lathrop. The trustee does not need permission from Lathrop to transfer causes of action against Lathrop.

The transfer of the claims against Lathrop to Mr. McCray has nothing to do with the assumption and assignment of executory contracts under 11 U.S.C. § 365 either. The agreement between the debtor and Lathrop is far from executory. As mentioned above, it terminated long ago.

Nor is the trustee transferring the causes of action against Lathrop under 11 U.S.C. § 363(f). Section 363 is implicated only in the event of a sale. This is not a sale. Even if it were, the trustee has not invoked section 363(f). The transfer of the causes of action is not free and clear of anything. It is subject to any encumbrances and/or defenses Lathrop might have to the claims.

9. 17-21790-A-7 ANTHONY/TRACI CHAMBLISS — MOTION TO REDEEM
WLG-1 — 5-19-17 [20]

Tentative Ruling: The motion will be denied without prejudice.

The debtor wishes to redeem a 2011 GMC "Light Duty Terrain" vehicle with 139,001 miles for $5,950. The vehicle is subject to a claim held by Credit Acceptance Corporation for an unidentified amount. Credit Acceptance Corporation opposes the motion.

Pursuant to 11 U.S.C. § 722, the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522 or has been abandoned under § 554, "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."

The vehicle must be valued at its replacement value. In the chapter 7 case of an individual, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The motion will be denied. First, the motion says that the vehicle "is exempt or has been abandoned." It does not say which. There is no evidence that the vehicle has been exempted or has been abandoned.

Second, neither of the motion's two supporting declarations makes an effort to authenticate the vehicle condition report and retail valuation report attached to the motion. Fed. R. Evid. 901(a); Dockets 22, 23, 24.

Third, the motion does not say whether the vehicle is a truck or a sport utility vehicle. The vehicle has not been adequately identified. It merely states that the vehicle is "Light Duty Terrain."

Fourth, the supporting declaration of Dan Hatfield, an automobile evaluator for 722 Redemption Funding, Inc. of Cincinnati, Ohio, does not state that he actually inspected the vehicle. He says only that he "reviewed and discussed [the vehicle] . . . though [*sic*] a phone conversation with debtor Traci Chambliss." Docket 22 at 2.

Mr. Hatfield could not have inspected the vehicle via the telephone. He then has no personal knowledge of the vehicle's condition. His information about the vehicle's condition, if any, has come from a conversation with the debtor. As such, Mr. Hatfield is not qualified to testify of the vehicle's condition, much less of the cost of correcting deficiencies in the vehicle's condition. Fed. R. Evid. 602.

Fifth, the motion does not describe the condition of the vehicle.

Mr. Hatfield's declaration lists only what he considers as required repairs "for [the vehicle] to be listed at its full retail price:"

– "windshield repair" ($300),
– "grill detail" ($100),
– "interior reconditioning" ($200), and
– "tire replacements" ($500).

However, there is nothing in the record identifying why the repairs are needed.

Sixth, even if Mr. Hatfield had personal knowledge of the vehicle's condition and the repairs listed were actually required, he has not been qualified to render an opinion on the cost of each repair. He has been identified solely as "an automobile evaluator." The court has no information about his experience in pricing vehicle repairs. For example, was he ever a car dealership mechanic?

Also, to a retail merchant, the cost of correcting blemishes in the condition of the vehicle will be far less than what a consumer would have to pay to correct the blemishes.

Finally, the motion does not explain why the cost of the repairs is not already accounted for in the vehicle's "average" condition used by the debtors to value the vehicle. Docket 24, Ex. 2. The vehicle is six years old. Isn't the condition of the vehicle consistent with its age? Would not any average six-year old GMC vehicle require $200 of interior reconditioning?

In short, the debtors have not carried their burden of persuasion on establishing the value of the vehicle for purposes of redemption. The motion will be denied without prejudice.

10. 17-21995-A-7 JASVINDER CHAHAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
RWR-1 — 5-22-17 [38]
BANK OF THE WEST VS.

Tentative Ruling: The motion will be denied.

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

The property has a value of $200,000 and, while the movant claims that the property is encumbered by claims totaling approximately $575,413, the court has evidence only of the movant's $44,413 claim against the property. The court has no evidence of $531,000 in additional encumbrances.

While the movant claims that the property is subject to approximately $531,000 of tax liens, there is no evidence in the record that the liens are encumbering the subject property. The motion's sole supporting declaration says nothing about the liens. Docket 41. And, the debtor's Schedule D, while listing the liens, does not say that they are encumbering the subject property. The value of the property securing the tax claims is listed as $0.00. Docket 19, Schedule D.

In short, the movant has not met its burden of persuasion on establishing lack of equity in the property.

On the other hand, the movant's claim secured by the property totals only $44,413, leaving approximately $155,587 of equity in the property.

Given the equity in the property, relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

The court also notes that the trustee has filed a notice of assets and opposes the motion on the basis of there being equity in the property. The trustee has discovered information indicating that the tax liens will be reduced. He is also working on paying off the liens from the liquidation of other property of the estate. The trustee is convinced that the tax liens will be paid in full and/or satisfied without a sale of the subject real property.

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 1200, 1202 (11th Cir. 1995).

The movant also has an equity cushion of approximately $155,587, based on the record. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains his discharge and the trustee administers the estate, or the case is closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. The debtor is scheduled to obtain a discharge soon after July 24, 2017.

Finally, according to the debtor's declaration in opposition to the motion, the reason for the default on the movant's loan was that the movant stopped the automatic withdrawal of payments from the debtor's bank account. The debtor claims he was unaware of this and contends that the loan will be brought current prior to the June 19 hearing.

The motion will be denied. The parties shall bear their own fees and costs.

FINAL RULINGS BEGIN HERE

11. 15-29525-A-7 LARRY/KELLY BUCKINGHAM
KJH-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE
5-19-17 [86]

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, Kimberly Husted, has filed first and final motion for approval of compensation. The requested compensation consists of $3,507.18 in fees (reduced by about 75%) and $122.79 in expenses, for a total of $3,629.97. The services for the sought compensation were provided from December 9, 2015 through the present. The sought compensation represents 317.20 hours of services.

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

The movant will make or has made $226,000 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $14,550 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $8,800 (5% of the next $950,000 ($176,000)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $3,507.18 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interest in real property,

(4) employing professionals to assist the estate in the administration of estate assets,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(8) addressing tax issues,

(9) preparing final report, and

(10) preparing compensation motion.

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

12. 16-27435-A-7 GARY/TRACY EASLEY — MOTION TO AVOID JUDICIAL LIEN
NF-3 — 5-3-17 [51]
VS. TRI COUNTIES BANK

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed 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, Manager, General Agent or Other Agent Authorized to receive Service of Process." Docket 55. 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").

13. 17-20535-A-7 VELDA CONEY-ELLIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 5-19-17 [18]
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 with respect to a 2009 Toyota Camry. The movant has produced evidence that the vehicle has a value of $8,100 ($4,344 in Schedule A/B) and its secured claim is approximately $9,308. Docket 20.

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 10, 2017. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

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

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

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

14. 10-23252-A-7 CECIL MCLEMORE — MOTION TO AVOID JUDICIAL LIEN
MS-1
VS. GEORGE GALEA — 5-8-17 [52]

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

The motion will be granted.

A judgment was entered against the debtor in favor of George Galea for the sum of $39,322.92 on November 2, 2009. The abstract of judgment was recorded with Siskiyou County on December 10, 2009. That lien attached to the debtor's 50% interest in two real properties in Hornbrook, California, identified as Lot 37.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Lot 37 had an approximate value of $5,000 as of the petition date. Dockets 54 & 55. The debtor's 50% interest in Lot 37 had an approximate value of $2,500. Id. The unavoidable liens totaled $0.00 on that same date. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $2,500 in Amended Schedule C. Dockets 54 & 55, Amended Schedule C.

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

15. 10-23252-A-7 CECIL MCLEMORE — MOTION TO AVOID JUDICIAL LIEN
MS-2
VS. GEORGE GALEA — 5-8-17 [57]

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

The motion will be granted.

A judgment was entered against the debtor in favor of George Galea for the sum of $39,322.92 on November 2, 2009. The abstract of judgment was recorded with Siskiyou County on December 10, 2009. That lien attached to the debtor's 50% interest in two real properties in Hornbrook, California, identified as Lot 115.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Lot 115 had an approximate value of $5,000 as of the petition date. Dockets 59 & 60. The debtor's 50% interest in Lot 115 had an approximate value of $2,500. Id. The unavoidable liens totaled $0.00 on that same date. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $2,500 in Amended Schedule C. Dockets 59 & 60, Amended Schedule C.

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

16. 16-23455-A-7 GRETCHEN GALLOWAY — MOTION FOR RELIEF FROM AUTOMATIC STAY
TGM-1
VW CREDIT, INC. VS. — 5-16-17 [42]

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, VW Credit, Inc., seeks relief from the automatic stay with respect to a 2010 VW Routan 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).

This case was filed as a chapter 13 proceeding on May 27, 2016. The debtor converted the case to chapter 7 on March 2, 2017 and a meeting of creditors was first convened on April 4, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 1. The debtor filed a statement of intention on the conversion date, March 2, 2017, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle. Docket 24.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

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 and reaffirm the debt secured by the vehicle, the debtor has not done so. And, no 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 4, 2017, 30 days after 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. The court also notes that the trustee filed a "no-asset" report on April 5, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on May 4, 2017.

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.

17. 17-22371-A-7 PAUL NGUYEN — MOTION TO AVOID JUDICIAL LIEN
AVN-1
VS. AMERICAN EXPRESS BANK, F.S.B. — 5-12-17 [12]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent, American Express Bank. Docket 16. It was served on American Express Bank's attorney in the underlying state court action, Elizabeth Bleier. Id. But, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Service on American Express Bank must comply with Fed. R. Bankr. P. 7004.

In the event the motion is reset for hearing, the debtor should note that:

(1) The attached abstract of judgment is unrecorded, meaning that the court has no evidence of the creation of the judicial lien.

(2) The evidence of value for the subject property is the debtor's opinion of value "according to her research" and not based merely on the fact that he owns the property. The debtor has not been qualified as an expert to render an opinion based on specialized knowledge. See Fed. R. Evid. 701 & 702.

(3) The motion does not establish the debtor's entitlement to the $100,000 exemption under Cal. Civ. Proc. Code § 704.730.

(4) The Amended Schedule C filed on May 9 (Docket 11), increasing the exemption from $24,885 to $100,000, was not served on the creditors and the trustee. 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).

18. 16-28175-A-7 DANNY FEWELL — MOTION TO AVOID JUDICIAL LIEN
TBK-4
VS. BENEFICIAL FINANCIAL, INC. — 5-11-17 [52]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Beneficial Financial,

Inc. for the sum of $10,856.58 on October 20, 2010. The abstract of judgment was recorded with San Joaquin County on February 10, 2011. That lien attached to the debtor's residential real property in Stockton, 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 $211,000 as of the petition date. Dockets 23 & 54. The unavoidable liens totaled $199,516.76 on that same date, consisting of outstanding property taxes in the amount of $2,516.76 and a single mortgage in favor of Bank of America in the amount of $197,000. Docket 23.

The Bank of America mortgage claim is not $217,000 as asserted by the debtor, based on a post-petition stay relief motion by the creditor. See Docket 37. $217,000 is not the figure given by the debtor as of the petition date. It is $197,000. Docket 23, Schedule D.

A debtor's 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 and the unavoidable encumbrances are determined as of the petition date and not some time post-petition as the creditor suggests.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $11,483.44 in Schedule C. Docket 23.

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).

19. 16-28175-A-7 DANNY FEWELL — MOTION TO AVOID JUDICIAL LIEN
TBK-5
VS. CAPITAL ONE BANK (USA), N.A. — 5-11-17 [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 respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $5,321.36 on January 2, 2014. The abstract of judgment was recorded with San Joaquin County on January 24, 2014. That lien attached to the debtor's residential real property in Stockton, 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 $211,000 as of the petition date.

Dockets 23 & 57. The unavoidable liens totaled $199,516.76 on that same date, consisting of outstanding property taxes in the amount of $2,516.76 and a single mortgage in favor of Bank of America in the amount of $197,000. Docket 23.

The Bank of America mortgage claim is not $217,000 as asserted by the debtor, based on a post-petition stay relief motion by the creditor. See Docket 37. $217,000 is not the figure given by the debtor as of the petition date. It is $197,000. Docket 23, Schedule D.

A debtor's 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 and the unavoidable encumbrances are determined as of the petition date and not some time post-petition as the creditor suggests.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $11,483.44 in Schedule C. Docket 23.

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

20.	17-22379-A-7 JCW-1 HSBC BANK USA, NA VS.	MARK CAMAREN	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-22-17 [22]

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, HSBC U.S.A., N.A., seeks relief from the automatic stay as to a real property in Corning, California. The property has a value of $230,000 and it is encumbered by claims totaling at least approximately $316,772. The movant's deed is in first priority position and secures a claim of approximately $316,772.

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

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

21. 17-23188-A-7 JANICE KASE — ORDER TO SHOW CAUSE 5-24-17 [15]

Final Ruling: This order to show cause will be discharged as moot as the case was dismissed on May 30, 2017.

22. 17-21193-A-7 SDB-2 WILLIAM BERNAL AND CELIA HAWKINS BERNAL — MOTION TO CONVERT CASE 6-2-17 [20]

Final Ruling: The motion will be dismissed without prejudice because it was set on less than 21 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(4). The motion was set for hearing on 17 days' notice. The motion papers were served and filed on June 2 for a hearing on June 19. Docket 23.