UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 20, 2016 at 10:00 a.m.

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

10, 15

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 18, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 5, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 12, 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.

1. 14-31810-A-7 MAHMOOD DEAN — MOTION TO SELL
HCS-4 — 5-23-16 [75]

Tentative Ruling: The motion will be conditionally granted.

The chapter 7 trustee requests authority to sell for $387,000 the estate's interest in a real property in Yuba City, California to Ved and Michell Ratti. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

The anticipated claims to be paid from escrow are: approximately $1,749 in outstanding property taxes; a mortgage in favor of Citimortgage for approximately $225,334; a $25,000 judgment of AgriCredit to come from the debtor's $75,000 exemption, stipulated to by the debtor; and the debtor's $50,000 remainder of the exemption. The trustee anticipates approximately $108,581 in net sale proceeds for the estate.

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 is projected to generate substantial proceeds for distribution to creditors of the estate.

Subject to hearing from the trustee what tax consequences, if any, the sale may trigger, the sale will be approved pursuant to 11 U.S.C. § 363(b). The court has been unable to find a tax consequence analysis in the motion.

The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission in accordance with the estate's broker's court-approved terms of employment.

2. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-23
VS. MICHAEL SPILLER — 3-24-16 [929]

Tentative Ruling: The objection will be sustained.

On June 21, 2012, claimant Michael Spiller filed an amended proof of claim in the amount of $21,457.26 (claim no. 21-1), all classified as a priority claim under 11 U.S.C. §§ 507(a)(4) and (a)(5), including:

- $2,076.96 in wages, earned in March 2012, representing 48 hours at $43.27 an hour,

- $6,923.20 for 160 hours of vacation pay (at $43.27 an hour), earned from March 30, 2009 through March 19, 2012,

- $384 as liquidated damages for violations of Cal. Labor Code § 1194.2, and

- $346.16 a day as penalties.

POC 21-1.

The claimant has also attached to the proof of claim a statement of his 401K PS

Plan, reflecting a partial withdrawal from his account.

The trustee objects to the proof of claim, disputing the classification of the claim amount, asking the court to classify the claim, except for $2,076.96, as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4) and (5), priority classification is allowed for:

"*(4) Fourth, allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*

". . .

"*(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan--*

"*(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only*

"*(B) for each such plan, to the extent of--*

"*(i) the number of employees covered by each such plan multiplied by $12,8501; less*

"*(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.*"

The court sees nothing in the attachments to the proof of claim reflecting unpaid contributions to an employee benefit plan. The court cannot discern from the 401K statement what, if anything, the debtor did not pay as a contribution to the claimant's benefit plan. To the extent the proof of claim asserts such basis for any portion of the claim, the proof of claim will be disallowed.

Next, the court will disallow the liquidated damages and penalties as priority, as section 507(a)(4) does not provide for such categories to be afforded priority status.

Further, based on this case's filing date of April 30, 2012 - as the court has no evidence when the debtor ceased doing business, the court calculates the 180 days for section 507(a)(4) purposes to have started on November 2, 2011.

The $6,923.20 for 160 hours of vacation pay will be reclassified as a general unsecured claim. The court cannot tell from the proof of claim whether any of those 160 hours were accrued during the 180-day period of section 507(a)(4).

Finally, the $2,076.96 in wages clearly fall within the 180-day period of section 507(a)(4). The wages were earned in March 2012 and the case was filed on April 30, 2012.

Accordingly, the court will reclassify the claim as a general unsecured claim except for the $2,076.96 in wages, which will remain classified as priority. The objection will be sustained.

3. 12-28413-A-7 F. RODGERS CORPORATION — OBJECTION TO CLAIM
CWC-26
VS. DAVE PAPINI — 3-24-16 [919]

Tentative Ruling: The objection will be sustained.

On June 26, 2012, claimant Dave Papini filed a proof of claim in the amount of $25,516.22 (claim no. 26-1), $10,368.62 of which was classified as a priority claim, consisting of:

- $3,472.62 in wages,

- $6,696 for 93 hours of vacation pay,

- $200 for gas reimbursement,

- $1,147.60 for medical reimbursement, and

- $15,000 for a bonus.

POC 26-1.

The trustee objects to the proof of claim, disputing the classification of the entire priority amount, asking the court to classify the entire claim as a general unsecured claim.

Under 11 U.S.C. § 507(a)(4), priority classification is allowed for:

"*allowed unsecured claims, but only to the extent of $12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--*

"*(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual.*"

Despite the itemization of the claim figure, the single page attachment to the proof of claim says nothing about the time periods represented by each itemized portion of the claim. As a result, the court cannot tell whether the claim falls within the 180-day period prescribed by section 507(a)(4). Accordingly, the objection will be sustained and the entire claim amount will be classified as a general unsecured claim.

4. 15-26214-A-7 SHARON WILSON — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
GMW-2 — 5-23-16 [26]

Tentative Ruling: The motion will be denied.

The debtor's soon to be former spouse, Kenneth Wilson, seeks damages against the debtor for stay violations in the continuation of a divorce proceeding involving the movant and the debtor in state court. The movant complains that

the debtor proceeded to trial in the divorce action, in February 2016, violating the stay that prohibits the commencement or continuation of a proceeding seeking "to determine the division of property that is property of the estate." 11 U.S.C. § 362(a)(1) & (b)(2)(A)(iv).

The motion will be denied. First, the movant has not alleged his standing to prosecute this motion. The stay of 11 U.S.C. § 362(a) was enacted to protect the debtor and the estate. The movant is not the debtor, nor does the movant represent the estate.

Second, while section 362(a) has been interpreted to give standing to individual creditors to seek damages for stay violations under the statute, the motion does not even make allegations of the movant being a creditor of the estate. Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 618 (9th Cir. 1993); In re Int'l Forex of California, Inc., 247 B.R. 284, 291-92 (Bankr. S.D. Cal. 2000) (awarding stay violation damages sustained by creditors); see also Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 585 (9th Cir. 1993) (noting that the automatic stay is designed to protect creditors as well as debtors).

On the contrary, the response to the motion indicates that the debtor is a creditor of the movant. Docket 34 at 3.

Finally, there was no bankruptcy stay when the alleged stay violation took place. The trial conducted by the state court "moved forward" on February 16, 2016. There was no stay as to the debtor on that date, as the debtor received her chapter 7 discharge on November 30, 2015. Docket 26 at 3; 11 U.S.C. § 362(c)(2)(C). This motion then makes no sense. It will be denied.

5.	13-23517-A-7 15-2065 FUKUSHIMA V. APOLLO EQUITY, L.L.C.	TRACY GATEWAY, L.L.C.	ORDER TO APPEAR FOR EXAMINATION (YVONNE LAU) 1-20-16 [39]

Tentative Ruling: None. The respondent shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

6.	13-23517-A-7 15-2065 FUKUSHIMA V. APOLLO EQUITY, L.L.C.	TRACY GATEWAY, L.L.C.	ORDER TO SHOW CAUSE 1-12-16 [38]

Tentative Ruling: The court issued this order to show cause because Apollo Equity, L.L.C. did not appear for an examination on January 11, 2016. The examination was continued to February 22, 2016 at 10:00 a.m. and then to March 7, 2016 at 10:00 a.m.

At the March 7 hearing, the court will consider assessing sanctions against Apollo if it determines that Apollo willfully failed to obey the court's November 13, 2015 order to appear at the January 11, 2016 examination.

If Apollo fails to appear on March 7, the court also will consider sanctions to compel attendance at an examination and production of records, including authorizing the apprehension of a representative of Apollo by the U.S. Marshall to compel such attendance and production.

7. 13-23517-A-7 TRACY GATEWAY, L.L.C. — ORDER TO APPEAR FOR EXAMINATION (APOLLO EQUITY, LLC) 11-13-15 [36]
15-2065
FUKUSHIMA V. APOLLO EQUITY, L.L.C.

Tentative Ruling: None. A responsible individual for the judgment debtor, Apollo Equity, L.L.C., shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

8. 09-39133-A-7 LARRY/ABBIGAIL CLYMER — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-19-16 [26]
NLG-1
BOSCO CREDIT, L.L.C. VS.

Tentative Ruling: The motion will be denied as moot.

The movant, Bosco Credit, L.L.C., seeks relief from the automatic stay as to a real property in Rocklin, California.

The debtor Abbigail Clymer opposes the motion, arguing that she will be filing a motion to convert to chapter 13 on June 8, 2016, and thus she is seeking to retain the property and reorganize the debt on the property.

The debtor's opposition will be stricken as it was filed late. Responses to this motion were due on June 6, 14 days prior to the June 20 hearing. Yet, the debtor's opposition was filed on June 7, without any explanation about the delay.

Further, given the entry of the debtor's discharge on December 9, 2009, 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 denied as moot.

The motion will be denied as to the estate as well, given that this case was previously closed on December 16, 2009. Upon closure of the case, the stay was dissolved. See 11 U.S.C. § 362(c)(2)(A). And, there is no authority for the resurrection of the automatic stay upon the reopening of the case.

9. 16-21136-A-7 CINDY HUNTER — MOTION TO DISMISS 5-25-16 [9]
MPD-1

Tentative Ruling: The motion will be granted and the case will be dismissed.

The trustee moves for dismissal because the debtor did not attend the first continued meeting of creditors held on May 25, 2016.

The debtor's counsel has filed a declaration stating that she is "informed and believe[s]" that the debtor was out of the country "on a pre-paid trip" on May 25, 2016. Docket 12.

The motion will be granted and the case will be dismissed. The debtor has the responsibility to appear at the meeting of creditors. The debtor did not appear at the May 25 meeting, despite having been notified of the meeting, as admitted by her counsel. Docket 12. The court has no admissible evidence explaining the debtor's absence. The debtor's counsel's declaration stating that she was out of the country "on a pre-paid trip" on May 25, 2016 is inadmissible as it admits to the declarant lacking personal knowledge of the

facts in the statement. Fed. R. Evid. 602. The statement is made based on information and belief, meaning that the declarant lacks personal knowledge of the facts in the statement.

And, even if the court had admissible evidence of the debtor being out of the country "on a pre-paid trip" on May 25, 2016, this is not an excuse for the debtor's failure to appear on that date.

The debtor's failure to appear at the May 25 meeting of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1). The motion will be granted and the case will be dismissed.

10. 14-28852-A-7 JOHN LIVINGSTON — MOTION TO EMPLOY ACCOUNTANT
DNL-4 — 5-27-16 [60]

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 requests approval to employ Gonzales & Sisto as accountant for the estate. G&S will assist the estate with the preparation of the estate's 2015 tax return. The proposed compensation is a flat fee of $1,300. 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. G&S 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.

11. 11-34464-A-7 STUART SMITS
11-2636
BARDIS V. SMITS

ORDER TO
APPEAR FOR EXAMINATION
(STUART LANSING SMITS)
10-14-15 [61]

Tentative Ruling: None. The judgment debtor shall appear and be sworn in prior to the 10:00 a.m. calendar and then the judgment creditor may examine the judgment debtor outside the courtroom.

12. 16-22872-A-7 RAVINDER GILL
BLC-3

MOTION TO
COMPEL ABANDONMENT O.S.T.
6-9-16 [24]

Tentative Ruling: The motion will be granted.

The debtor requests an order compelling the trustee to abandon the estate's interest in his 7 Eleven gas station business.

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 business assets include:

- the debtor's commercial real property in Yuba City, California on Market St. (with a scheduled value of $1.2 million),

- $10,000 in gas purchase receivables,

- gas pumps and tanks (with a scheduled value of $10,000),

- EVR upgraded gas tank (with a scheduled value of $8,500),

- business bank deposit in the amount of $35,000 held by 7 Eleven Corp.,

- the 7 Eleven franchise agreement (with a scheduled value of $0.00), and

- gas in tanks (with a scheduled value of $15,000).

Docket 28.

The value for each asset above is substantiated by the debtor's opinion of value in his declaration in support of the motion. Docket 26.

The debtor contends that the above business assets have a total value of $1,278,500 and that such assets are over-encumbered by the following claims:

— $1,409,788 claim secured by all the above assets, held by Suncrest Bank ($1,331,288 per Schedule D (Docket 28); and

— $49,651.83 claim secured by the above commercial real property and the $35,000 bank deposit.

Given the value and encumbrances of the business assets, 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.

13. 15-25585-A-7 MATTHEW WATERS — MOTION TO AVOID JUDICIAL LIEN
ADS-2
VS. NEWPORT CAPITAL RECOVERY GROUP — 5-10-16 [54]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Newport Capital Recovery Group II, L.L.C. for the sum of $12,401.89 on November 10, 2010. The abstract of judgment was recorded with San Francisco County on December 9, 2010. That lien attached to the debtor's residential real property in San Francisco, California. The debtor seeks avoidance of the lien under 11 U.S.C. § 522(f).

The motion will be denied because it does not contain evidence about the value of the property as to which the debtor seeks the lien avoidance and it does not contain evidence of the unavoidable liens against the property. The declaration in support of the motion values only the debtor's partial interest in the property and identifies the amount of the respondent's lien. Docket 56. This information is inadequate for determination of whether the lien can be avoided. The motion will be denied.

14. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO USE CASH COLLATERAL AND TO PAY
FWP-2 — 5-26-16 [98]

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

The hearing on this motion was continued from May 31, 2016, for a final hearing on the chapter 11 trustee's motion for use of cash collateral.

The chapter 11 trustee seeks approval to use the cash collateral of several creditors secured by four shopping centers and six residential rental properties, through July 31, 2016.

Four shopping centers are involved in this case, including:

- on Stockton Boulevard in Sacramento, California (no voluntary liens, encumbered solely by the United States' $3,029,412.64 criminal restitution judgment lien);

- in Rio Linda, California (no voluntary liens, encumbered solely by the United States' $3,029,412.64 criminal restitution judgment lien);

- in West Sacramento, California (valued at $4.3 million and subject to an approximately $2.925 million first priority claim held by Fairview Holdings II, L.L.C. and United States' second priority criminal restitution judgment);

- on Power Inn Road in Sacramento, California (valued at $1.2 million and subject to an approximately $650,000 first priority claim held by JP Morgan Chase Bank and United States' second priority criminal restitution judgment).

All of the estate's residential properties are in Sacramento, California and they include:

- 130 Prairie Circle,
- 180 Prairie Circle,
- 186 Prairie Circle,
- 209 Prairie Circle,

- 5924 Pony Trial Way, and
- 148 Estes Way.

11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The motion will be denied as to the Stockton Boulevard and Rio Linda shopping centers. The court has no evidence that the rental income from those properties is encumbered. Hence, the rental income is not cash collateral and the trustee does not need the court's authorization to use it in the ordinary course of business.

There is no evidence that the exception to 11 U.S.C. § 552(a) applies. Section 552 provides:

"*(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.*

"*(b)*

. . .

"*(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.*"

The Stockton Boulevard and Rio Linda shopping centers are not subject to voluntary liens, meaning that the security agreement exception of section 552(a) does not apply. The only creditor with a claim secured by those properties, the United States, acquired a pre-petition involuntary lien against the properties. The United States does not have a "security agreement" giving rise to a lien on post-petition rents from those properties.

While the United States holds a criminal restitution judgment lien on the Stockton Boulevard and Rio Linda shopping centers, whereby an abstract of the judgment was recorded with each respective county recorder, the court has seen no legal authority for a judgment creditor to acquire a lien on post-petition rental proceeds simply by recording an abstract of the judgment against the property.

Further, the motion will be denied as to the Rio Linda shopping center also because it came to light at the May 31 hearing that this shopping center was not owned by the debtors but by a limited liability company owned by the

debtors.

Next, as to the West Sacramento and Power Inn shopping centers, the court will approve use of cash collateral on the terms in the order allowing interim use of such cash collateral. See Docket 110.

Finally, subject to hearing or reviewing more information about the residential properties, the court may consider granting use of cash collateral as to those properties on the terms in the order permitting interim use of such cash collateral. See Docket 110.

15. 11-42492-A-7 JEFFREY/GAYE WILSON — MOTION TO AVOID JUDICIAL LIEN
MAC-12
VS. DISCOVER BANK — 6-6-16 [109]

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

The motion will be granted.

A judgment was entered against the debtor Gaye Wilson in favor of Discover Bank for the sum of $3,836.98 on October 12, 2006. The abstract of judgment was recorded with Sacramento County on July 19, 2007. That lien attached to the debtor's residential real property in Wilton, 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 $288,500 as of the petition date. Dockets 111 & 112. The unavoidable liens totaled $314,830 on that same date, consisting of a single mortgage in favor of BAC Home Loans Servicing. Dockets 111 & 112. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 38, 111, 112.

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).

FINAL RULINGS BEGIN HERE

16. 16-20802-A-7 ISAAC SCHARAGA
EMM-1
DEUTSCHE BANK NATIONAL TRUST CO. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-10-16 [11]

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, Deutsche Bank National Trust Company, seeks relief from the automatic stay as to a real property in Red Bluff, California.

Given the entry of the debtor's discharge on June 7, 2016, 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 $245,000 and it is encumbered by claims totaling approximately $313,749. The movant's deed is the only encumbrance against the property.

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

Thus, the motion will be granted 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.

17. 12-28413-A-7 F. RODGERS CORPORATION
CWC-22
VS. SOUND SEAL

OBJECTION TO CLAIM
5-11-16 [982]

Final Ruling: This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

On July 7, 2008, claimant Sound Seal filed a priority unsecured proof of claim in the amount of $14,415 (claim no. 114-1).

The trustee objects to the proof of claim, disputing the classification of the claim as anything other than general unsecured claim. The court agrees. While the claim is classified as a priority unsecured claim, there is nothing in the attachments to warrant such classification. The claim is for materials Sound Seal sold to the debtor, pursuant to an order dated December 1, 2011 and an invoice dated December 9, 2011. The invoice is attached to the proof of claim. This bankruptcy case was filed on April 30, 2012. The proof of claim form also does not identify the basis for the asserted priority classification.

Accordingly, the objection will be sustained and the claim will be classified as a general unsecured claim.

18. 12-28413-A-7 F. RODGERS CORPORATION
CWC-28
VS. MATT WARNER

OBJECTION TO CLAIM
5-11-16 [977]

Final Ruling: The objection will be dismissed without prejudice.

The objecting party has provided only 40 days' notice of the hearing on this objection. Nevertheless, the notice of hearing for the objection requires written oppositions at least 14 days before the hearing. But, objections noticed on less than 44 but more than 30 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 3007-1(b)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, they could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the objection will be dismissed.

19. 14-29519-A-7 CHARLES BORNCAMP
RM-6
VS. UNIFUND CCR, L.L.C.

MOTION TO CORRECT PRIOR ORDER AVOIDING LIEN AND MOTION TO AVOID LIEN
5-27-16 [65]

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 Unifund CCR, LLC for the sum of $10,927.42 on November 25, 2013. The abstract of judgment was recorded with San Joaquin County on January 13, 2014. That lien attached to the debtor's residential real property in Tracy, 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 $340,000 as of the petition date. Docket 65. The unavoidable liens totaled $276,000 on that same date, consisting of a first mortgage in favor of M&T Bank in the amount of $228,000 and a second mortgage in favor of Bank of America in the amount of $48,000. Dockets 65 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3)(A) in the amount of $175,000 in Schedule C. Dockets 65 & 1.

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

20. 16-23247-A-7 ROSE FACIANE — MOTION FOR RELIEF FROM AUTOMATIC STAY
CARRINGTON MORTGAGE SERVICES, L.L.C. VS. — 5-25-16 [15]

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.

Finally, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion does not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

21. 15-21850-A-7 A.L.L. GROUPS, INC. MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
GCL-1 6-6-16 [52]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Wells Fargo 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 to an officer of Wells Fargo Bank. It was addressed rather to someone named Marc Andres in the Office of General Counsel at Wells Fargo Bank. Also, the motion papers were not served by certified mail. Docket 56.

22. 16-21971-A-7 LISA HERNANDEZ MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 5-11-16 [13]
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., Inc., seeks relief from the automatic stay with respect to a 2004 Honda Accord 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 March 30, 2016 and a meeting of creditors was first convened on May 9, 2016. Therefore, a statement of intention that refers to the movant's property and debt was due no later than April 29. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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 did not do so timely. 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 June 8, 2016, 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 May 9, 2016, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 8, 2016.

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. 16-21780-A-7 KAREN MEYER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 5-18-16 [13]
JPMORGAN CHASE 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, JP Morgan Chase Bank, seeks relief from the automatic stay as to a real property in Shasta Lake, California. The property has a value of $136,000 and it is encumbered by claims totaling approximately $169,742. The movant's deed is in first priority position and secures a claim of approximately $133,897.

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 April 27, 2016.

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.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

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.

24. 15-26985-A-7 SCOTT HOMES — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 11-20-15 [26]
U.S. BANK, N.A. VS.

Final Ruling: The hearing on this motion has been continued to August 1, 2016 at 10:00 a.m. Docket 55.

25. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
DVD-4 — 5-11-16 [90]
VS. CAPITAL ONE BANK (USA), N.A.

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 $4,381.24 on October 25, 2013. The abstract of judgment was recorded with San Joaquin County on November 25, 2013. That lien attached to the debtor's residential real property in Tracy, 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 $131,000 as of the date of the petition. Dockets 1 & 92. The unavoidable liens total $177,930.95 on that same date, consisting of a single mortgage in favor of Seterus, Inc. Docket 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $10,000 in Schedule C. Dockets 1 & 92.

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).

26. 14-22895-A-7 CHRISTINA PEELER WALKER — MOTION TO AVOID JUDICIAL LIEN
DVD-5 — 5-11-16 [95]
VS. COUNTY OF SAN JOAQUIN, REVENUE AND RECOVERY

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 County of San Joaquin for the sum of $10,398.56 on October 3, 2013. The abstract of judgment was recorded with San Joaquin County on November 27, 2013. That lien attached to the debtor's residential real property in Tracy, 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 $131,000 as of the date of the petition. Dockets 1 & 97. The unavoidable liens total $177,930.95 on that same date, consisting of a single mortgage in favor of Seterus, Inc. Docket 36. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $10,000 in Schedule C. Dockets 1 & 97.

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).