

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 29, 2014 at 9:32 A.M.

1. 13-34754-B-11 CIELO VINEYARDS & WINERY, LLC CONTINUED MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR AMERICAN COMMERCIAL REAL ESTATE, BROKER(S)
SAC-6 6-17-14 [[108](#)]

Tentative Ruling: This motion continued from July 15, 2014, to allow the debtor to file supplemental briefing. The debtor did so timely. Because the supplemental briefing and supporting papers were filed and served on July 15, 2014, fourteen days before the date of this hearing, the court treats this motion as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues no tentative ruling on the merits of the motion.

2. 13-34754-B-11 CIELO VINEYARDS & WINERY, LLC CONTINUED MOTION TO DISMISS CASE
WSS-2 6-6-14 [[102](#)]

Tentative Ruling: This matter continued from July 15, 2014. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

3. 11-37711-B-7 DELANO RETAIL PARTNERS,
13-2250 LLC DBR-4 MOTION FOR APPOINTMENT OF A
C&S WHOLESALE GROCERS, INC. V. RECEIVER AND/OR MOTION FOR
DELANO ET AL PRELIMINARY INJUNCTIVE RELIEF
7-1-14 [[180](#)]

Tentative Ruling: None.

4. 11-37711-B-7 DELANO RETAIL PARTNERS,
13-2250 LLC DBR-5
C&S WHOLESALE GROCERS, INC. V.
DELANO ET AL MOTION FOR PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION
7-15-14 [191]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is granted in part. The Stipulated Protective Order (the "Order") filed as Exhibit "A" to the motion (Dkt. 194 at 2) is approved as binding between the parties thereto and will be entered as an order of the court, subject to the following modifications: (1) the bankruptcy court and its personnel do not singly or collectively constitute a "non-party" pursuant to Paragraph 2.8 of the Order; and (2) nothing in the Order affects any other court or the order(s) of any other court, whether by reason of the definition of a "non-party" pursuant to Paragraph 2.8 of the Order, or by reason of any other provision(s) of the Order.

The parties shall submit an amended copy of the Order which conforms to the foregoing ruling. The court will issue a minute order granting the motion.

5. 09-35241-B-13 ANTHONY/LILIA DICUS MOTION TO DISMISS ADVERSARY
14-2127 BJK-1 PROCEEDING
DICUS ET AL V. ONEWEST BANK,
FSB ET AL 6-11-14 [26]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to August 12, 2014, at 9:32 a.m. On or before July 1, 2014, the plaintiff debtors shall file the opposition to the motion referenced in the moving defendants' reply (Dkt. 35), but which does not appear on the court's docket.

No opposition to the motion by the plaintiffs appears on the docket of the adversary proceeding or the docket of the parent bankruptcy case. However, the moving defendants' reply (Dkt. 35) references an opposition served on the defendants by the plaintiffs. In the interest of deciding the matter on its merits, the court continues the motion to allow the plaintiffs to file their opposition, so as to complete the record and to allow the court to review the opposition.

The court will issue a minute order.

Tentative Ruling: Defendant and counterclaimant Romel Magno Hamo's opposition is sustained in part. The motion is granted in part. The seventeenth counterclaim for relief in the defendant's counterclaim (the "Counterclaim") filed on June 2, 2014, is dismissed without leave to amend. Except as so ordered, the motion is denied.

Plaintiff brings this motion on the basis of issue preclusion. The court agrees with the defendant that neither issue preclusion nor claim preclusion bars the various claims alleged in the Counterclaim. The debtor argues that two prior events in her parent chapter 13 case, (1) the denial of the defendant's second motion for an extension of the deadline to object to the debtor's discharge or the dischargeability of a debt by order entered September 12, 2013, and (2) the confirmation of the debtor's chapter 13 plan by order entered October 23, 2013, are preclusive of the claims alleged in the Counterclaim.

The debtor is incorrect. Issue preclusion, also called collateral estoppel, prevents parties from relitigating issues that were adjudicated in a previous dispute between the parties. Issue preclusion applies when "(1) the issue at stake [is] identical to the one alleged in the prior litigation; (2) the issue [was] actually litigated in the prior litigation; and (3) the determination of the issue in the prior litigation [was] a critical and necessary part of the judgment in the action." Clark v. Bear Stearns & Co., Inc., 966 F.2d 1318, 1320 (9th Cir. 1995).

The debtor has not shown that the foregoing elements are satisfied. Sixteen of the defendant's seventeen counterclaims are based on an alleged employment relationship between the defendant and the debtor and the circumstances of said employment relationship have allegedly given rise to various wage, labor and tort claims. The seventeenth claim alleges that the debtor has concealed financial transactions from the court and parties in interest which justifies vacatur of the order confirming the chapter 13 plan and/or denial of the debtor's discharge (the court presumes that the Counterclaim's reference to "28 U.S.C. § 727" with respect to the seventeenth claim for relief is intended to be a reference to 11 U.S.C. § 727). Issues relating to those claims were not litigated or determined in connection with the denial of the defendant's request for an extension of the deadline to file a dischargeability complaint. In connection with that request, the court determined that the defendant had not shown cause for his requested extension because he had not shown the diligence required to obtain an extension. That finding does not constitute a determination of the facts alleged in the Counterclaim.

Issues relating to the facts alleged in the Counterclaim were also not determined in connection with confirmation of the chapter 13 plan. In connection with confirmation of the plan, the court found that the debtor had satisfied the confirmation requirements of 11 U.S.C. § 1325, and found that the defendant had not presented sufficient evidence or legal analysis to support his objections that the plan was not proposed in good

faith under § 1325(a)(3) or that the plan did not satisfy the requirements of § 1325(a)(4). Determination of those issues did not involve or even require determining the merits of the defendant's counterclaims.

As for claim preclusion, also called res judicata, the elements necessary to establish claim preclusion are: (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties. Headwaters, Inc. v. United States Forest Serv., 399 F.3d 1047, 1051 (9th Cir. 2005). The debtor has not shown that those elements are met. Neither the denial of the defendant's second motion for an extension of the deadline to object to the debtor's discharge or the dischargeability of a debt or the confirmation of the debtor's chapter 13 plan involved a final judgment on the merits of the defendant's counterclaims.

However, the defendant's seventeenth counterclaim for vacatur of the order confirming the plan and/or denial of the debtor's discharge are dismissed from this adversary proceeding without leave to amend pursuant to Fed. R. Civ. P. 12(b)(6) because the defendant does not state a claim upon which relief may be granted. Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here under Fed. R. Bankr. P. 7012, is to tests the legal sufficiency of a party's claims for relief. In determining whether a party has advanced potentially viable claims, the complaint is to be construed in a light most favorable to the plaintiff and its allegations taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Church of Scientology of Cal. v. Flynn, 744 F.2d 694, 696 (9th Cir.1984). . . .

A dismissal under Rule 12(b)(6) may be based on the lack of cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). . . . the Court is not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). Courts will not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003); accord W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Furthermore, courts will not assume that plaintiffs "can prove facts which [they have] not alleged, or that the defendants have violated . . . laws in ways that have not been alleged." Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526; 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983). . . .

Toscano v. Ameriquest Mortg. Co., 2007 U.S. Dist. LEXIS 81884 (E.D. Cal. 2007).

If a Fed. R. Civ. P. 12(b)(6) motion to dismiss is granted, "[the] court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc), quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). In other words, the court is not required to grant leave to amend when an amendment would be futile. See Toscano, 2007 U.S. Dist. LEXIS 81884 (citing Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)).

In this case, the seventeenth claim is dismissed because the defendant is time-barred from bringing the claim. The defendant alleged the seventeenth counterclaim for the first time in the Counterclaim filed on June 2, 2014. To the extent the defendant seeks denial of the debtor's discharge, the deadline for him to do so expired on July 30, 2013, and, as discussed above, he was not granted an extension of that deadline.

To the extent the defendant seeks to have the order confirming the debtor's plan set aside, pursuant to 11 U.S.C. § 1330 requests for revocation of an order of confirmation must be filed within 180 days after the date of the entry of the confirmation order. The order confirming the chapter 13 plan was entered on October 23, 2013. 180 days after that date was April 21, 2014. The defendant filed the Counterclaim requesting revocation of the order confirming the plan on June 2, 2014, 42 days too late. Accordingly, the seventeenth claim is dismissed without leave to amend because amendment of the claim would be futile, as the defendant is time-barred from seeking the relief sought in the seventeenth claim, a fact which cannot be remedied by additional pleading.

The court's ruling is limited to the argument presented - that the claims in the counterclaim are precluded.

The court acknowledges that the defendant has requested that if the seventeenth claim for relief is dismissed that he be given leave to file a motion to dismiss the bankruptcy case under 11 U.S.C. § 1112. Nothing in this ruling shall be construed as granting or denying the defendant leave to file such a motion, because the court's leave is not required to do so. The court notes, however, that 11 U.S.C. § 1112 is not applicable in chapter 13 cases.

The court will issue a minute order.

7.	<u>11-48519</u> -B-7	VICTOR HANNAN MPD-1	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH VICTOR LLOYD HANNAN AND/OR MOTION TO SELL 6-3-14 [208]
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Tentative Ruling: This motion continued from July 1, 2014. Although the motion was filed under LBR 9014-1(f)(1), because the trustee filed and served an amendment to the compromise agreement that is the subject of this motion on July 14, 2014, 15 days before the date of this hearing, the court treats the motion as one filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues the following tentative ruling on the merits of the motion.

The motion is granted to the extent set forth herein. Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363(b), the Sale and Compromise Agreement filed as Exhibit "A" to the motion (Dkt. 211) (the "Agreement"), as modified by the First Amendment to Sale and Compromise Agreement filed as Exhibit "B" to the motion (Dkt. 224), is approved. Pursuant to 11 U.S.C. § 363(b), Fed R. Bankr. P. 6004 and the terms of the Agreement the

trustee is authorized to sell the estate's interest in all non-exempt equity of scheduled assets of the estate, including but not limited to the estate's interest in the Residential Real Property, the Commercial Real Property, the VHLM Shares and the Vehicles (as those terms are defined in the Agreement) in an "as-is, where-is" to the debtor for \$82,500.00. The trustee is authorized to execute all documents necessary to effectuate the terms of the Agreement. The proceeds of the sale shall be administered for the benefit of the estate. The 14-day stay of the order granting the motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

As for the compromise aspect of the Agreement, the court has great latitude in approving compromise agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The trustee alleges that the Agreement is fair and equitable and in the best interests of creditors and the estate. Entering into the Agreement spares the estate the expense of potentially expensive and time-consuming litigation in favor of obtaining funds which can immediately be distributed to creditors of the estate. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006).

The court will issue a minute order.

8. 14-23902-B-7 GLENDA HARGROVE-HARRIS
JMC-1

MOTION TO AVOID LIEN OF ACCOUNT
RESOLUTION
6-12-14 [24]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of Persolve, LLC, dba Account Resolution Associates, recorded in the official records of Solano County, Document No. 201300082234, is avoided as against the real property located at 347 Gypsum Drive, Vallejo, California.

The subject real property has a value of \$165,200.00 as of the date of the petition. The unavoidable liens total \$299,650.00. The debtor claimed the property as exempt under California Code of Civil Procedure

Section 703.140(b)(1), under which she exempted \$1.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

9. 14-22504-B-7 EVER/GUADALUPE MALDONADO MOTION TO AVOID LIEN OF CACH,
UND-1 LLC
6-16-14 [[25](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of CACH, LLC, recorded in the official records of Sacramento County, Book 20130130, Page 0866, is avoided as against the real property located at 8640 Daimler Way, Sacramento, California.

The subject real property has a value of \$260,000.00 as of the date of the petition. The unavoidable liens total \$200,107.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$58,893.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

10. 14-22504-B-7 EVER/GUADALUPE MALDONADO MOTION TO AVOID LIEN OF
UND-2 AMERICAN EXPRESS BANK, FSB
6-16-14 [[31](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of American Express Bank, FSB, recorded in the official records of Sacramento County, Book 20130130, Page 0866, is avoided as against the real property located at 8640 Daimler Way, Sacramento, California.

The subject real property has a value of \$260,000.00 as of the date of the petition. The unavoidable liens total \$200,107.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.200, under which they exempted \$58,893.00. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

11. [14-26509](#)-B-7 JACK/JANINE LARSCHEID MOTION TO COMPEL ABANDONMENT
AA-2 7-15-14 [[17](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to September 9, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b) (1) has expired.

The court will issue a minute order.

12. [14-26121](#)-B-7 SCOTT/KIMARIE TERRILL MOTION TO COMPEL ABANDONMENT
MG-1 7-2-14 [[9](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to August 26, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b) (1) has expired.

The court will issue a minute order.

13. 14-23143-B-7 JASON/AMY TAYLOR
LBG-1 MOTION TO AVOID LIEN OF PATELCO
CREDIT UNION
6-20-14 [19]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of Patelco Credit Union, recorded in the official records of Placer County, Document No. 2014-0004343-00, is avoided as against the real property located at 2145 Sterling Drive, Rocklin, California.

The subject real property has a value of \$329,000.00 as of the date of the petition. The unavoidable liens total \$251,301.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730, under which they exempted \$100,000. 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 debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

14. 14-26608-B-11 DARA PETROLEUM, INC.
NSK-1 MOTION PURSUANT TO 11 U.S.C.
SEC. 365 TO ASSUME STIPULATION
FOR ENTRY OF SATISFACTION OF
JUDGMENT WITH HSBC BANK USA,
N.A., AS TRUSTEE
6-18-14 [29]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

15. 13-30420-B-7 STEPAN KIRCHU
13-2348 KWD-1 CONTINUED MOTION FOR ENTRY OF
LEE V. KIRCHU DEFAULT JUDGMENT
3-24-14 [24]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to September 9, 2014, at 9:32 a.m. to allow for resolution of the Plaintiff's motion for relief from automatic stay (Bky. Dkt. 13) set for hearing August 12, 2014, at 9:31 a.m.

16. 14-23733-B-7 LINH NGUYEN CONTINUED MOTION TO COMPEL
ABANDONMENT
6-18-14 [[30](#)]
- Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.
17. 14-25747-B-7 MICHAEL/BLYTHE MASON MOTION TO AVOID LIEN OF
RK-1 AMERICAN SAVINGS BANK F.S.B.
6-26-14 [[20](#)]
- Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.
- The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of American Savings Bank, F.S.B., recorded in the official records of Placer County, Doc. No. 2014-0025927-00, is avoided as against the real property located at 1825 Krpan Drive, Roseville, CA 95747 (the "Property").
- The Property had a value of \$550,000.00 as of the date of the petition. The unavoidable liens total approximately \$549,762.50. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$240.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the 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 debtors' exemption of the Property and its fixing is avoided.
- The court will issue a minute order.
18. 14-25196-B-7 SHERI ENERSON TRUSTEE'S MOTION TO DISMISS FOR
SLC-1 FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
6-25-14 [[13](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The chapter 7 trustee withdrew the motion on July 23, 2014 (Dkt. 22).

19. 08-22725-B-7 BAYER PROTECTIVE
DL-9 SERVICES, INC. MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DAHL LAW FOR
WALTER R. DAHL, DEBTOR'S
ATTORNEY
6-19-14 [923]

Tentative Ruling: The United States Trustee (the "UST")'s opposition is sustained. The motion is granted in part. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a second and final basis in the reduced amount of \$14,072.28 in fees and expenses (including \$1,902.50 in fees and \$156.08 in expenses incurred in preparation of the fee application) for the period of November 1, 2013, through and including March 11, 2014, payable as a chapter 11 administrative expense. Except as so ordered, the motion is denied.

On March 6, 2008, the debtor commenced the above-captioned case by filing a voluntary petition under chapter 11 (Dkt. 1). By order entered on April 3, 2008 (Dkt. 28), the court authorized the then-debtor in possession to employ the applicant as its counsel effective March 6, 2008. By order entered on March 11, 2014 (Dkt. 793), the court converted the case to one under chapter 7. Post-conversion, the applicant did not seek employment under 11 U.S.C. § 327. The applicant now seeks compensation for services rendered and costs incurred during the period of November 1, 2013, through and including May 31, 2014, which includes post-conversion services rendered and costs incurred from March 11, 2014, through and including May 31, 2014.

The court is persuaded by the arguments and authorities set forth in the UST's opposition. Accordingly, the court reduces, from the originally requested \$19,649.91, \$4,726.00 in post-conversion fees and expenses incurred as well as \$851.63 in fees and expenses incurred in preparing and prosecuting the applicant's motion to withdraw as counsel. Thus, the total award of fees and expenses is \$14,072.28. This amount includes approval of the \$826.50 payment the applicant received from the debtor on December 30, 2013, as well as the requested fees and expenses associated with preparing for and prosecuting the instant motion. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The applicant's arguments in reply to the UST's opposition are unavailing. See Shapiro Buchman LLP v. Gore Bros. (In re Monument Auto Detail), 226 B.R. 219, 224-25 (9th Cir. BAP 1998) (quoting In re Weibel, 176 B.R. 209, 212 (9th Cir. BAP 1994) ("Compensation to professionals acting on behalf of the estate must be based on provisions of the Code. The Code does not provide for fee awards based on state law theories such as quantum meruit.")).

The court will issue a minute order.

20. 08-22725-B-7 BAYER PROTECTIVE SERVICES, INC. MOTION BY WALTER R. DAHL TO WITHDRAW AS ATTORNEY
DL-10 6-19-14 [[930](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The movant, Dahl Law, Attorneys at Law (the "Movant"), is permitted to withdraw as counsel for the debtor, Bayer Protective Services, Inc., in this bankruptcy case, case no. 08-22725-B-7. The Movant shall forward to the debtor any documents or correspondences that are related to this bankruptcy case and received by the Movant in the future. Except as so ordered, the motion is denied.

The Movant alleges without dispute that it provided services to the debtor both when the case was in a chapter 11 and after the case was converted to one under chapter 7. The Movant further alleges without dispute that, post-conversion, a chapter 7 trustee has been appointed and the trustee has retained independent counsel, special counsel, and other estate professionals to continue administration of the chapter 7 case. No further transitional services have been provided by the Movant, and the trustee has not requested to employ the Movant for any further services. In the absence of opposition, the court finds that the Movant has established grounds for permissive withdrawal from employment pursuant to California Rule of Professional Conduct 3-700(C) (6).

The court will issue a minute order.

21. 14-22276-B-7 SHAWNA EMERY CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT
HLC-2 OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGEABILITY OF A DEBT
6-13-14 [[16](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

22. 14-23799-B-7 JOSEPH SHEERIN MOTION TO AVOID LIEN OF
JES-1 FALCONWOOD HOME OWNER'S
ASSOCIATION
7-1-14 [[20](#)]

Tentative Ruling: Creditor Falconwood Condominium Homeowners Association ("Falconwood")'s opposition is sustained in part. The motion is denied.

Falconwood's request for attorney's fees and costs of suit is denied.

By this motion the debtor seeks to avoid a lien in favor of Falconwood, based on a recorded Notice of Delinquent Assessment (Dkt. 20, p.11-12), to the extent that it encumbers the debtor's claim of exemption in his real property located at 901 Russell Avenue #113, Santa Rosa, California. However, as Falconwood correctly asserts in its opposition, 11 U.S.C. § 522(f) permits avoidance of only two specific types of liens, either (1) judicial liens, or (2) non-possessory non-purchase money security interests in certain personal property listed under § 522(f)(1)(B). The lien of Falconwood falls into neither of the foregoing categories. The lien of Falconwood is a statutory lien under Cal. Civ. Code § 5675. Under California law, judicial liens on real property are created by recording an abstract of money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). The Notice of Delinquent Assessment is not an abstract of money judgment.

Falconwood's request for attorney's fees and costs of suit is denied because it cites to no authority in support of such a request. LBR 9014-1(d)(5).

The court will issue a minute order.

23. [14-24957](#)-B-7 DEBRA HARRAKA
MC-1 CONTINUED MOTION TO COMPEL
ABANDONMENT
5-15-14 [[9](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

24. [11-33768](#)-B-7 THOMAS/ARACELI MATTHEWS
RM-1 MOTION TO REOPEN CHAPTER 7
BANKRUPTCY CASE AND/OR MOTION
TO AVOID LIEN OF AMERICAN
EXPRESS (AMERICAN EXPRESS
CENTURION BANK)
6-13-14 [[31](#)]

CASE CLOSED 9/23/11

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied without prejudice.

By this motion the debtors seek to (1) reopen the instant case, and (2) avoid the judicial lien held by American Express/American Express Centurion Bank ("American Express") as it encumbers their claim of exemption in the real property located at 1890 Petrig Court, Tracy, California 95376 (the "Property"). The motion is denied without

prejudice for the following reasons.

First, with respect to the request to reopen the case, Local Bankruptcy Rule 5010-1 makes clear that "a motion to reopen a case shall contain a statement of the grounds for reopening the case, *but shall not contain a request for any other relief.*" LBR 5010-1(b) (emphasis added). Here, the motion asks for relief beyond simply reopening the case, i.e., to avoid a judicial lien under 11 U.S.C. § 522(f). Accordingly, the motion to reopen is denied without prejudice.

Second, with respect to the request that American Express's judicial lien be avoided, the court finds that the debtors have failed to establish the existence of a judicial lien encumbering the Property. To avoid a nonconsensual judicial lien, the debtors must satisfy the following elements:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). The debtors have not shown the existence of a judicial lien encumbering the Property. Under California law, a judgment lien on real property is created by the recording of an abstract of a money judgment with the county recorder for the county in which the real property is located. Cal. Civ. Proc. Code § 697.310(a). Here, the debtors have failed to attach to the motion a copy of the abstract of judgment and proof of its recordation. Simply stating in the motion that an abstract of judgment was recorded is insufficient.

The court will issue a minute order.

25. 13-34976-B-11 CORINNE HUTTLINGER
TMP-8

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
7-9-14 [[129](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is continued to a final evidentiary hearing on September 18, 2014, at 10:00 a.m. before the Honorable David E. Russell in courtroom 32.

On or before September 11, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each

exhibit and a brief description of the corresponding document. The movant's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before September 11, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of Bank of America, N.A. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - movant's stock number 58093 and respondent's stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

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| 26. <u>13-31022</u> -B-7 KATHLEEN DEEGAN
<u>13-2363</u>
NOBACH V. DEEGAN | MOTION TO COMPEL AND MOTION FOR
AN ORDER FOR REIMBURSEMENT OF
EXPENSES INCURRED
7-7-14 [<u>24</u>] |
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Tentative Ruling: None.

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| 27. <u>13-31022</u> -B-7 KATHLEEN DEEGAN
<u>13-2363</u>
NOBACH V. DEEGAN | MOTION TO COMPEL AND MOTION FOR
ORDER FOR REIMBURSEMENT OF
EXPENSES INCURRED
7-7-14 [<u>30</u>] |
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Tentative Ruling: None.