UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

May 28, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 14-22503-D-7 JULIANE BUZZARD — MOTION TO AVOID LIEN OF EQUABLE ASCENT FINANCIAL, LLC
ACK-1 — 4-22-14 [10]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Equable Ascent Financial, LLC (the "creditor"). The motion will be denied because the moving party failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the creditor by certified mail at a street address, with no attention line, whereas a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be served by first-class mail (see preamble to Fed. R. Bankr. P. 7004(b)), to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3). The moving party also served the attorneys who obtained the creditor's abstract of judgment, whereas there is no evidence those attorneys are authorized to accept service of process on the creditor's behalf in bankruptcy adversary proceedings pursuant to Fed. R. Bankr. P. 7004(h). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004).

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

2.	13-33804-D-7 RSS-2	RHONDA STIJAKOVICH-SANTILLI	MOTION TO COMPEL ABANDONMENT 4-29-14 [40]

3.	13-21707-D-7 KY-1	JAMES/DIANE STRAUSS	MOTION TO AVOID LIEN OF BARRETT BUSINESS SERVICES, INC. 4-16-14 [31]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Barrett Business Services, Inc. (the "creditor"). The motion will be denied for three reasons. First, the moving parties failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the creditor through its agent for service of process, but by certified mail, whereas a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be served by first-class mail (see preamble to Fed. R. Bankr. P. 7004(b)). The moving parties also served the attorneys who obtained the creditor's abstract of judgment, whereas there is no evidence those attorneys are authorized to accept service of process on the creditor's behalf in bankruptcy adversary proceedings pursuant to Fed. R. Bankr. P. 7004(h). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). (The attorneys have filed a request for special notice in this case; however, the request says nothing that would support the conclusion that they are authorized to receive such service of process.)

The motion will be denied for the additional independent reason that the moving parties have failed to demonstrate they are entitled to the relief requested. Specifically, the moving parties have failed to demonstrate that the creditor holds a judicial lien that is subject to avoidance. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): 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 . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

The debtors claim the creditor has a lien on the debtors' real property in Diamond Springs, California by virtue of an abstract of judgment recorded in the Placer County Recorder's Office. By contrast, Diamond Springs is in El Dorado County, California. Under California law, the recording of an abstract of judgment with the county recorder of a particular county creates a judicial lien on real property of the judgment debtor in that county (Cal. Code Civ. Proc. § 697.310(a)), whereas the debtors have submitted no evidence they own real property in Placer County, where the abstract of judgment was recorded, or that the creditor also

recorded an abstract of judgment in El Dorado County, where the debtors own real property. Thus, there is no evidence there is a lien here that is subject to avoidance.

Finally, the debtors submitted a copy of the cover page of the abstract of judgment only, and not of the abstract of judgment itself. Thus, the court cannot determine whether the abstract of judgment, even if it had been recorded in El Dorado County, created a lien that would impair an exemption to which the debtors would be entitled.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

4. 13-21707-D-7 JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
KY-2 — 4-16-14 [34]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Wells Fargo Bank (the "creditor"). The motion will be denied for two reasons. First, the moving parties have failed to demonstrate they are entitled to the relief requested. Specifically, the moving parties have failed to demonstrate that the creditor holds a judicial lien that is subject to avoidance. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): 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 . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

The debtors claim the creditor has a lien on the debtors' real property in Diamond Springs, California by virtue of an abstract of judgment recorded in the Placer County Recorder's Office. By contrast, Diamond Springs is in El Dorado County, California. Under California law, the recording of an abstract of judgment with the county recorder of a particular county creates a judicial lien on real property of the judgment debtor in that county (Cal. Code Civ. Proc. § 697.310(a)), whereas the debtors have submitted no evidence they own real property in Placer County, where the abstract of judgment was recorded, or that the creditor also recorded an abstract of judgment in El Dorado County, where the debtors own real property. Thus, there is no evidence there is a lien here that is subject to avoidance.

Second, the debtors submitted a copy of the cover page of the abstract of judgment only, and not of the abstract of judgment itself. Thus, the court cannot determine whether the abstract of judgment, even if it had been recorded in El Dorado County, created a lien that would impair an exemption to which the debtors would be entitled.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

5. 13-24507-D-7 CWS-2 — DKW PRECISION MACHINING INC. — MOTION FOR AUTHORITY TO OPERATE THE BUSINESS OF DEBTOR FOR A LIMITED PERIOD OF TIME
4-30-14 [110]

6. 14-20710-D-7 BLL-4 — JERENE BONDS — MOTION TO EMPLOY COLDWELL BANKER SCOTT VALLEY REAL ESTATE AS REALTOR(S) AND/OR MOTION TO PAY
4-23-14 [27]

Final ruling:

This is the trustee's motion to employ a realtor. No party-in-interest has filed opposition. However, the court is not prepared to grant the motion at this time because the supporting declaration does not satisfy applicable rules regarding disclosure of connections. The realtor's declaration lists the realtor's connections with the trustee and his attorney in this case (she has listed and sold properties for the trustee on multiple occasions, and she has a professional relationship with the trustee's attorney). She describes this list as a list of her connections with the relevant parties. However, as to her firm, Coldwell Banker Scott Valley Real Estate, the realtor merely concludes that neither the firm nor any of its employees has an interest adverse to the estate in the matters upon which employment is sought. This is not sufficient – disclosure must be made of the connections of the firm and its employees with the relevant parties. Further, the declaration does not close with the statement required by LBR 2014-1.

The court will continue the hearing to June 11, 2014, at 10:00 a.m., the moving party to supplement the record no later than June 4, 2014. The hearing will be continued by minute order. No appearance is necessary on May 28, 2014.

7. 12-38911-D-7 LRR-1 — DONALD THOMAS — MOTION TO COMPEL ABANDONMENT
4-8-14 [21]

8. 13-28020-D-7 HSM-7 — ROGER/BONNIE TURNER — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 3-31-14 [54]

Final ruling:

The hearing on this objection is continued to June 25, 2014 at 10:00 a.m. per entered on May 15, 2014. No appearance is necessary on May 28, 2014.

9. 13-20823-D-11 MHK-13 — MELVIN/DARLENE SHIMADA — MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU & KASSENBROCK FOR ANTHONY ASEBEDO, DEBTORS' ATTORNEY(S) 4-30-14 [378]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

10. 14-22923-D-7 TJW-1 — HECTOR NAVARRO — MOTION TO COMPEL ABANDONMENT 4-29-14 [12]

11. 14-23447-D-7 MDE-1 ONEWEST BANK, N.A. VS. — VICQUIE LEE — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 4-23-14 [9]

Tentative ruling:

This is the motion of One West Bank, N.A. (the "Movant") for relief from stay. The Movant asserts that there is no equity in the property that is the subject of this motion and the property is not necessary for an effective reorganization. The record supports the Movant's assertions in this regard.[1] Movant further asserts its interest in the subject property is not adequately protected. Accordingly, Movant asserts cause exists for relief from stay under Bankruptcy Code § 362(d)(1) and (2). The debtor opposes the motion based on various tort claims he asserts against the Movant, including claims for fraud and negligence. Pursuant to Code § 362(g) the moving party has the burden of proof to demonstrate that there is no equity in the

property, and the debtor has the burden of proof on all other issues.

The debtor's assertion of various tort claims against the Movant is not a meritorious defense to the relief from stay motion. Stay litigation is limited in scope to issues of adequate protection, equity in the property, and whether the property is necessary for an effective reorganization. The validity of the claim, or contract underlying the claim, is not litigated during a relief from stay hearing. In re Johnson, 759 F.2d 738 (9th Cir. 1985). Stay relief hearings do not involve a full adjudication on the merits of the claims, defenses, or counter-claims, but simply a determination as to whether creditor has a colorable claim. In re Robins, 310 B.R. 626 (9th Cir. BAP 2004).

As the Movant has established that there is no equity in the subject property, and the property is not necessary for an effective reorganization, relief from stay will be granted under Code § 362(d)(1) by minute order.

The court will hear the matter.

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1 The schedules filed by the debtor list the value of the subject property at $985,000 and liens on the property of $1,140,000.

12.	14-22151-D-7 LSS-1	RAYMOND SADOWSKI	MOTION TO EMPLOY ROYNE REALTY LTD. AS PROPERTY MANAGEMENT COMPANY 4-15-14 [17]

Final ruling:

This is the trustee's motion to employ a property management company, Rogne Realty, Ltd. ("Rogue"). No party-in-interest has filed opposition. However, the court is not prepared to grant the motion at this time because the supporting declaration does not satisfy applicable rules regarding disclosure of connections. The declarant, the managing broker for Rogne, states that neither Rogne nor she has any interest adverse to the estate in the matters for which Rogne's employment is sought, nor do they have any connections with the debtors, creditors, any other person employed in the office of the United States Trustee other than as set forth below. There are no connections disclosed below. The declaration is deficient because it does not identify all the parties as to whom connections must be disclosed, as listed in Fed. R. Bankr. P. 2014, and does not close with the statement required by LBR 2014-1. Further, the declaration does not appear to be accurate as it does not disclose any connection between Rogne and the debtor, whereas according to the trustee's motion, Rogne was collecting the rents and managing the property at the time the petition was filed, apparently as property manager for the debtor. This is a connection that should have been disclosed in the declaration.

The court will continue the hearing to June 11, 2014, at 10:00 a.m., the moving party to supplement the record no later than June 4, 2014. The hearing will be continued by minute order. No appearance is necessary on May 28, 2014.

13. 12-41158-D-7 SSA-5 — ROBERTO/CONSOLACION BAUTISTA — MOTION FOR COMPENSATION FOR ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S) 4-28-14 [121]

14. 12-41158-D-7 SSA-6 — ROBERTO/CONSOLACION BAUTISTA — MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY 4-28-14 [127]

15. 13-26559-D-7 RCO-1 — BRIAN MCGLONE — U.S. BANK, N.A. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 4-18-14 [26]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on * and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.**

16. 09-29162-D-11 09-2692 SHARP V. SSC FARMS I, LLC ET AL — SK FOODS, L.P. SH-19 — MOTION TO DISMISS ADVERSARY PROCEEDING 4-24-14 [1071]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss adversary proceeding is supported by the record. As such the court will grant the motion to dismiss adversary proceeding. Moving party is to submit an appropriate order. No appearance is necessary.

17. 09-29162-D-11 SK FOODS, L.P.
14-2025 BMZ-1
SHARP V. KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
3-28-14 [21]

Final ruling:

All action in this adversary proceeding has been stayed pending the District Court's ruling on a pending motion to withdraw the reference. As a result, the hearing on this motion is continued to June 19, 2014 at 10:00 a.m. The continued hearing will be used as a status conference. No appearance is necessary on May 28, 2014.

18. 13-35066-D-7 JOAN POTTERTON
DMB-3

MOTION TO SELL
4-30-14 [30]

19. 12-20571-D-7 PRITPAUL SAPPAL
DNL-5

MOTION FOR COMPENSATION FOR J. LUKE HENDRIX, TRUSTEE'S ATTORNEY
4-30-14 [211]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

20. 12-20571-D-7 PRITPAUL SAPPAL
DNL-7

MOTION FOR COMPENSATION FOR MARIAM S. MARSHALL, TRUSTEE'S ATTORNEY
4-30-14 [206]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

21. 12-20571-D-7 PRITPAUL SAPPAL — MOTION FOR COMPENSATION FOR
DNL-8 — BACHECKI, CROM AND CO., LLP,
Final ruling: — ACCOUNTANT(S)
4-30-14 [201]

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

22. 14-20271-D-7 CHRISTOPHER ALLEY — OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION BY VIRGINIA ALLEY
Tentative ruling: — 4-11-14 [13]

This matter has been docketed and calendared as an objection to the trustee's report of no distribution. In fact, the document, filed by Virginia Wilson, the debtor's former spouse, is entitled "Objections to Bankruptcy"; it does not raise an objection to the trustee's report of no distribution. Instead, it purports to object to certain "listed claims" in the bankruptcy case.

The debtor's response appears to explain accurately what the objecting party, Ms. Wilson, is seeking. Apparently, she is objecting to the debtor's listing of three items on his bankruptcy schedules. First, she objects to his listing of a $23,000 debt to Safe Credit Union on the ground that this debt was Ms. Wilson's sole obligation on account of property she owned before their marriage, and on which the debtor was a co-signer only. The debtor agrees that the property is Ms. Wilson's sole and separate property, that she remains liable on the debt as the primary signer, and that the debt was listed on his Schedule F because the debtor was liable as a co-signer. Second, Ms. Wilson objects to the debtor's listing on his Schedule F of a $15,000 debt to her on the ground that the debt was listed in the parties' marital settlement agreement, filed in their dissolution proceeding, and "should be paid in full to" Virginia Wilson. The debtor states that the debt was on account of an equalizing payment, and that he listed it on his Schedule F because all debts must be listed. He concedes the debt is nondischargeable. Finally, Ms. Wilson objects to the debtor's listing on his Schedule B of a 2001 Ford F-150, which she states is in her possession. The debtor states he listed the vehicle on his Schedule B in the interest of full disclosure, but he notes that he also stated on the schedule that his ex-wife received the vehicle in their divorce. In his response to this objection, the debtor acknowledges that the vehicle is the sole property of Ms. Wilson. In short, the debtor concedes "there is no disagreement from the Debtor in what Ms. Wilson is requesting."

The debtor's response appears to resolve the matter. However, from the court's perspective, Ms. Wilson has not requested any relief from the court in a form in which the court could consider it. That is, in order for the court to make the determinations requested by Ms. Wilson, she would need to file an adversary proceeding, which she has not done. Accordingly, the court will overrule the objection without prejudice.

The court will hear the matter.

23. 12-31973-D-7 CHESTER/SHERRI LEASURE — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMD-1 — 4-30-14 [114]
THE BANK OF NEW YORK MELLON
VS.

Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

24. 14-22873-D-7 AMANDALYNN MCCLELLAND — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-21-14 [5]

25. 14-21479-D-7 LEGUSTA/PATRICIA HALL — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 4-25-14 [15]
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Americredit Financial Services, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

26. 14-23390-D-7 RAKESH KUMARAN AND ESHA NAIDU — MOTION TO COMPEL ABANDONMENT
LES-1 — 4-16-14 [13]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

27. 14-20191-D-7 DL-1 — MICHAEL FOGLIA AND TAMARA MORGAN — MOTION TO AVOID LIEN OF CATERPILLAR FINANCIAL SERVICES CORPORATION
4-17-14 [34]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

28. 14-20191-D-7 DL-2 — MICHAEL FOGLIA AND TAMARA MORGAN — MOTION TO AVOID LIEN OF CITIBANK SOUTH DAKOTA, N.A.
4-17-14 [41]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

29. 14-23995-D-11 — JINTANA SHAW — STATUS CONFERENCE RE: VOLUNTARY PETITION
4-18-14 [1]

Tentative ruling:

This is an initial status conference in this chapter 11 case. Although the court does not ordinarily issue tentative rulings for status conferences, it does so here to address its significant concerns about this case.

First, the debtor has failed to serve the Order to (1) File Status Report; and (2) Attend Status Conference, issued April 21, 2014, as expressly required by that order. Further, she has not filed or served a status report, as also required by that order. The debtor was required by that order to (1) serve a copy of the order on certain enumerated parties no later than May 2, 2014; and (2) to file and serve a status report no later than May 9, 2014. As of this date, the debtor has fulfilled neither of those requirements.

Second, the debtor filed her schedules of assets and creditors three weeks after she filed her master address list; she did not amend the master address list when she filed the schedules. Thus, the master address list does not include Bank of America or Mercy General Hospital, both listed on the debtor's Schedule F for debts of significant amounts, and those creditors have not received notice of the case.

Third, on her Schedule G, the debtor has listed 23 different tenants or sets of tenants by address but without providing their names. (They are listed only as

"Tenant" or "Tenants.") As with Bank of America and Mercy General Hospital, the debtor's tenants have not been given notice of this case. The debtor did the same thing on her Schedule G filed in her prior case, Case No. 11-23193 in this court. The court indicated in a ruling for the initial status conference in that case that because of the very broad interpretations of "creditor" and "claim," as defined in the Bankruptcy Code, the debtor should have listed the tenants' names and addresses on her Schedule G and master address list, should have given the tenants notice of the case, and should have served the tenants with the scheduling order and status report filed in that case. The court continued the status conference, and the debtor amended her Schedule G and master address list to list her tenants' names and addresses, gave them notice of the case, and served her status report on them.

Despite the court's clear indication to the debtor in her prior case that her tenants were to be treated as creditors, the debtor has again listed them on her Schedule G by address only and not by name, and has not included them on her master address list, such that they have not been given notice of this case.

For these reasons, the court intends to consider at the status conference whether a trustee should be appointed, or whether this case should be dismissed or converted to chapter 7. See Order to (1) File Status Report; and (2) Attend Status Conference, filed April 21, 2014 ["Failure to comply with this order may result in sanctions including dismissal, conversion, or the appointment of a trustee."].

The court will hear the matter.

30.	14-22597-D-7 MDM-1	CARLOS LOPEZ AND CELESTE TORRES	MOTION TO RECONSIDER ORDER GRANTING WAIVER OF FILING FEE 4-24-14 [24]

31.	13-21199-D-7 13-2156 EVANS V. SCOTT	JAMES SCOTT	MOTION BY DAVID T. DUNCAN TO WITHDRAW AS ATTORNEY 4-21-14 [27]

Tentative ruling:

This is the motion of David Duncan and the Duncan Law Firm to withdraw as counsel for the plaintiff in this adversary proceeding. No party-in-interest has filed opposition; however, due to the nature of the motion, the court will conduct a hearing. Further, regardless of the absence of opposition, the court is not prepared to consider the motion because the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. If a corrected proof of service (of the motion, declaration, and notice of hearing) has not been filed by the time of the hearing, the motion will be denied.

The court will hear the matter.

32. 13-24507-D-7 DKW PRECISION MACHINING INC.
HRH-2
PNC EQUIPMENT FINANCE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-8-14 [116]

33. 14-24110-D-7 TERIA TETZ-HALL

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-6-14 [14]

Final ruling:

This case was dismissed on May 12, 2014. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

34. 14-20619-D-7 DAN/THERESA JORDAN
SW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-12-14 [18]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtors' did not list the property on their Statement of Intentions and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

35. 13-28020-D-7 ROGER/BONNIE TURNER
EJS-1

CONTINUED MOTION TO AVOID LIEN OF GE MONEY BANK, CAPITAL ONE BANK (USA), N.A., THE GOLDEN ONE CREDIT UNION, ET AL.
3-12-14 [48]

Final ruling:

This is the debtors' motion to avoid four different judicial liens. As to two of those liens – those held by GE Money Bank (now GE Capital Retail Bank) and Capital One Bank (USA) N.A., the motion was properly served, no timely opposition has been filed, the relief requested is supported by the record, and the motion will be granted. The moving parties may submit an appropriate order.

As to the other two liens – those held by the Golden 1 Credit Union and FIA Card Services, N.A., the motion was not properly served, and despite two continuances, the debtors have not remedied the service defect. As a result, the motion will be denied as to those two liens. The court will issue a minute order granting the motion as to the liens of the first two creditors listed above, and denying the motion as to the other two. No appearance is necessary.

36.	10-47422-D-7 12-2118 FARRAR V. LEXINGTON CONSULTING, INC. ET AL	DENNIS/SHERYL LANCASTER HSM-2	CONTINUED MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR PARTIAL SUMMARY ADJUDICATION 2-14-14 [74]

This matter will not be called before 10:30 a.m.

Tentative ruling:

This is the motion of the plaintiff, the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against defendants James Brent Rogers ("Rogers") and Tracy's California Blast, LLC ("TCB") (collectively and together with Lexington Consulting, Inc. ("Lexington"), the "defendants"). TCB and Rogers have filed opposition, and the trustee has filed a reply. For the following reasons, the motion will be granted.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

The trustee alleges in his complaint that on or about April 27, 2011, the debtors in the underlying case entered into a purported agreement to loan $200,000 to Lexington;[1] that the funds "loaned" were property of the debtors' bankruptcy estate; that on or about June 19, 2011, Lexington entered into a purported agreement to loan the same $200,000 to TCB;[2] that neither the debtors nor the trustee has received anything of value from the defendants on account of either transfer; and that the transfers were not authorized by the court and are avoidable pursuant to § 549 of the Bankruptcy Code.[3] The trustee seeks to avoid the transfers pursuant to § 549, and to recover the funds transferred, or their value, from the defendants, pursuant to § 550(a). He also seeks turnover of the funds or their value pursuant to § 542.

The Motion as Against Rogers as the Alter Ego of Lexington

The trustee alleges in this motion that for purposes of avoidance of the transfer and recovery of the funds under §§ 549 and 550(a), Lexington was the initial transferee of the funds, and Rogers was and is the alter ego of Lexington.[4] Rogers and TCB essentially admit that Lexington was the initial transferee and that the transfer is voidable as against Lexington:

> **For purposes of this motion, it would appear to be that Lexington[] Consulting, Inc. is an initial transferee. In addition, the Court could also recognize that the initial contract between the Debtor and Lexington Consulting, Inc. was voidable based on the status of Lexington Consulting, Inc. as being a suspended corporation at the time of the loan agreement and therefore a voidable contract.**

Points and Authorities in Opposition to Motion, filed April 25, 2014 ("Opp'n"), at 4:4-8.

The only defense raised by Rogers personally is that he should not be held liable as the alter ego of Lexington. The theory of alter ego liability has been articulated fairly recently by the Ninth Circuit Court of Appeals. First, the court is to apply state law. Goodrich v. Briones (In re Schwarzkopf), 626 F.3d 1032, 1037 (9th Cir. 2010). Second,

> California recognizes alter ego liability where two conditions are met: First, where "there is such a unity of interest and ownership that the individuality, or separateness, of the said person and corporation has ceased;" and, second, where "adherence to the fiction of the separate existence of the corporation would . . . sanction a fraud or promote injustice." Factors suggesting an alter ego relationship include "[c]ommingling of funds and other assets [and] failure to segregate funds of the separate entities . . . ; the treatment by an individual of the assets of the corporation as his own . . . ; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities . . . ; [and] the diversion [of assets from a corporation by or to a] stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets . . . between entities so as to concentrate the assets in one and the liabilities in another."

Id. at 1038 (citations omitted).

Rogers admits the following. He has at all times been the sole shareholder, officer, and director of Lexington. Since at least 2010, Lexington's business address has been Rogers' home address. Lexington had no income in 2010, 2011, or 2012. Lexington's corporate powers were suspended by the Secretary of State on April 8, 2010. In addition to these admissions, a Certificate of Status from the Secretary of State reveals that Lexington's corporate powers "remain[ed] suspended" as of the date of the certificate, June 12, 2012; no one has suggested the corporate powers were revived at any time between April 8, 2010 and June 12, 2012. (In fact, it appears they have never been revived.) Thus, when the Sheryl Madison/Lexington loan agreement was signed, on April 27, 2011, Lexington's corporate powers had been suspended for over a year; they remained suspended when Lexington deposited the $200,000 cashier's check from Sheryl Madison on June 30, 2011 and when Lexington loaned the $200,000 to TCB in July of 2011.

The following additional facts about Lexington and Rogers are relevant and are supported by the record. On August 2, 2007, Rogers incorporated Lexington. Just over a year later, on August 19, 2008, he caused Lexington to file a chapter 11 petition in the bankruptcy court for the Northern District of California, commencing Case No. 08-54532.[5] On Lexington's bankruptcy schedules, signed under oath by Rogers, he listed two single-family residences in Los Gatos, California, which he listed as having values of $11.5 million and $3.5 million, respectively, with liens of $4.85 million and $2.3 million, respectively. He listed no other assets of Lexington except $2,500 in a bank account. The only unsecured creditor listed was Rogers himself, listed as being owed $1,300,000 for "Money lent for construction 2005-2008" (despite the fact that Rogers did not incorporate Lexington until August of 2007). On Lexington's Schedule H, Rogers noted that he was the obligor on the notes and deeds of trust on the two residences, adding that Lexington had acquired title to both properties by grant deed from Rogers in March of 2008. In reality,

one of those properties, the one Rogers listed as being worth $11.5 million, had been transferred by Rogers to Lexington not in March of 2008 but by a grant deed signed by Rogers on August 7, 2008, and recorded the same day. That was 12 days before Rogers caused Lexington to file its chapter 11 petition.

A creditor's motion for relief from stay filed one month into Lexington's case revealed another property owned by Lexington that Rogers had omitted from Lexington's schedules. The motion stated the property was Rogers' residence. Six weeks after the motion was filed, Rogers signed and caused Lexington to file an amended Schedule A, on which he added that property, valuing it at $3.7 million and showing liens totaling $4.15 million. In a declaration filed in opposition to the relief from stay motion, Rogers testified that he had executed the grant deeds to Lexington in March of 2008, but the recording did not occur until shortly before the bankruptcy filing. Although he stated he had taken title in his name personally so as to "facilitate the obtaining of [construction] loans,"[6] he did not indicate why he then transferred the property into Lexington's name and caused Lexington to file bankruptcy. He did not address the creditor's accusation of bad faith in failing to list the third property (apparently his residence) on Lexington's original schedules.

The creditor seeking relief from stay noted that Rogers' execution of one of the grant deeds to Lexington on March 3, 2008 came just two weeks after he had signed (personally and not on behalf of Lexington) a loan modification agreement with the creditor and three days before a deed of trust was recorded in the creditor's favor giving it a third position deed of trust on the same property as additional security (with Rogers, not Lexington, as trustor). After Rogers signed the grant deed to Lexington on March 3, 2008, he proceeded to sign, personally, a second loan modification agreement with the creditor, on May 9, 2008, without, according to the creditor, disclosing that he had signed a grant deed transferring the property to Lexington.

In Lexington's original statement of financial affairs, filed September 9, 2008, Rogers testified Lexington had gross income of $250,000 in 2007 and $0 between January 1 and August 19, 2008. In an amended statement of affairs, filed four months later, Rogers testified Lexington had gross income of $0 in 2007 and $0 year-to-date in 2008. He did not explain why he had originally listed $250,000 for 2007. In the original and amended statements of affairs, he testified Lexington had made no payments to creditors of $600 or more in the 90 days preceding its bankruptcy filing; it had made no payments or transfers to insider creditors within the preceding year; it had not been a party to any lawsuits or administrative proceedings, and had had no property attached, garnished, seized, repossessed, or foreclosed on; it had made no gifts and had no losses within the preceding year; and it had made no transfers of any other kind within the preceding two years.[7] (According to Lexington's statement of affairs, its attorney's fees for the case were paid by Rogers.) Lexington had closed no financial accounts, had no safe deposit boxes, had had no setoffs made against it, held no property for another, and had no prior addresses. That is, Lexington had done very little business, if any. Absent the transfers of the two residences by Rogers to Lexington, Lexington would have had no meaningful existence at all.

The chapter 11 lasted almost two years, during which time Lexington sought and obtained approval to incur additional debt to complete the high-end residence being constructed on one of the properties. Lexington eventually sought to dismiss the case on the ground that efforts to sell the properties or restructure the debt had failed. Despite the nearly $8 million in equity Rogers had scheduled at the outset

of the case, Lexington now claimed there was no equity in the properties. The court, on motion of the United States Trustee, converted the case to chapter 7 based on Lexington's failure to file monthly operating reports. Although the trustee filed a report of no distribution fairly quickly, the case remained open as a chapter 7 case until January 6, 2012.

Four months later, on April 26, 2012, Rogers caused Lexington to file a second chapter 11 petition, again in the Northern District of California, commencing Case No. 12-53153. As in the prior case, the schedules and statement of affairs were signed under oath by Rogers. This time, the schedules disclosed that Lexington owned three single-family residences in California – one was the property Rogers had added by amendment in the 2008 case; the other two residences had not been listed in the 2008 case.[8] The three properties in the 2012 case were listed by Rogers as being worth a combined $8.7 million, with combined equity of $700,000. Lexington's Schedule A contained this notation: "All properties are title[d] in the name of Debtor [Lexington], however, the secured loans are in the name of the Debtor's principal, James Rogers." Trustee's Exhibits, filed Feb. 14, 2014 ("Exhibits"), Ex. 3, p. 42. The only other assets listed were $225 in bank accounts and a promissory note in favor of Lexington for $200,000. It appears this was the note for the $200,000 loan Lexington made to TCB in July of 2011.[9]

In the 2012 case, Rogers listed the liens against the residences on Lexington's Schedule D, listed no priority debts, and listed as general unsecured creditors only (1) the trustee in this adversary proceeding, as holding a disputed claim in an unknown amount, and (2) Sheryl Madison as being owed $200,000. Rogers listed himself as a co-debtor of Lexington on the debt to the trustee. He stated on the statement of affairs that Lexington's gross income in 2010, 2011, and 2012 had been "$0.00." As in the 2008 case, he testified Lexington had paid no creditors more than $600 within the preceding 90 days; had made no payments or transfers to insider creditors within the preceding year; and had not been a party to any lawsuits or administrative proceedings except this adversary proceeding. He testified Lexington had lost no property to foreclosure in the preceding year, and except for attorney's fees paid to its chapter 11 attorney, it had made no transfers of property within the preceding two years.[10] Thus, the two properties listed in Lexington's 2008 case, the combined value of which Rogers had reported at $15 million, disappeared from Lexington's balance sheet with no explanation at all.[11] In short, as disclosed in the statement of affairs, Lexington appears to have had, as in the time leading up to its 2008 filing, no business operations and no discernible business purpose at all other than as record owner of properties on which Rogers was liable for the debt and as a shell corporation to be used by Rogers as he saw fit to satisfy his personal needs.

On June 11, 2012, less than two months into the case, Lexington's second chapter 11 case was converted to chapter 7 due to Lexington's failure to comply with the United States Trustee's request, later incorporated into a court order, to produce documents. Motions for relief from stay filed thereafter by the lienholders on the three single-family residences indicated that no payments had been made on the loans on which Rogers was the borrower since March 2008, March 2008, and September 2008, respectively. Thus, the motions itemized 63, 62, and 53 missed monthly payments, respectively, for total arrears owing as of the filing date of $1,464,188, $554,333, and $806,171, respectively.

Going back to April of 2011, on April 29, 2011, two days after the date of the Sheryl Madison/Lexington loan agreement, the City of Tracy, California, entered into an Exclusive Negotiating Rights Agreement ("ENRA") with TCB for the possible

development of a motorsports park on real property owned by the City. About 18 months later, the City Council discovered Lexington's bankruptcy case, as well as a number of lawsuits and judgment liens involving Rogers. Called upon by the City Council to provide explanations, Rogers, on April 1, 2013 (while Lexington was in a open chapter 7 case, with no authority to conduct business), wrote to the City Council concerning, among other things, the bankruptcy case. He stated: "The corporation is currently active and has three residential properties in Los Gatos totaling $9m in value. It is currently a guarantor on a loan from an investor, Sheryl Madison Lancaster. It has filed bankruptcy to protect the rights of this valued investor."[12] (The values, before deduction of liens, of the three properties Rogers had listed on Lexington's Schedule A totaled $8.7 million.) Three and one-half months later, on July 22, 2013, Rogers signed declarations under oath supporting Lexington's motions for orders abandoning the three properties, in which he testified that the current fair market values of the three properties, before deduction of liens, totaled no more than $6.6 million, a drop of $2.4 million from the $9 million figure he had given the City Council less than four months earlier. It is a reasonable inference, which the court draws, that Rogers did not believe one or the other of those disparate representations at the time he made it. The court also infers that Rogers was willing to say and did say whatever suited his needs at the time.

The trustee has submitted copies of Lexington's bank statements for the period July 21, 2010, when the account was opened, through June 26, 2012, when it was closed. The bank statements reveal that despite the fact that Lexington's statement of financial affairs explicitly stated it had no income in 2010, 2011, or 2012, Lexington engaged in a large number of transactions through its bank account – both deposits and withdrawals, including (in addition to the deposit of Sheryl Madison's $200,000 on June 30, 2011) an incoming wire transfer of $50,000 from U.S. Bank on July 14, 2011 relating to something called Golden Property Investment, LLC, and other deposits of several thousand dollars each, identified on the bank statements only as "Deposit," with no explanation. Rogers has not suggested or shown where those deposits came from, and based on Lexington's lack of income-generating assets,[13] the court concludes the funds deposited into the account were not Lexington's funds to begin with, but Rogers' or some other entity of his.

Lexington also issued many checks during that two-year period, some for several hundred and some for several thousand dollars, including several payments each to Comcast, Verizon, PG&E, San Jose Water Co., Anthem on-Line, and even to a dentist. There was also a large number of online transfers, both into and out of the account, and ATM withdrawals on a regular basis. Those transactions, including the deposit of Sheryl Madison's $200,000 and the $50,000 wire transfer from U.S. Bank, took place while Lexington was in an open chapter 7 case, as did the withdrawal, on July 21, 2011, of $180,000, which Rogers used to open checking and savings accounts for TCB, with deposits of $80,000 and $100,000, respectively. The remaining $20,000 was used to purchase a 2007 BMW in Rogers' name.[14] Rogers does not claim he reported any of those transactions to Lexington's chapter 7 trustee.

The court readily concludes that Rogers used Lexington's bank account, whether for his personal expenses or those of another of his entities, as it suited his needs at the time of each transaction. There is, for instance, no evidence Lexington needed to pay for utility, cable, or cell phone services. To the extent, if any, Rogers suggests Lexington needed to pay for utilities on the real properties

it owned of record, the beneficiary of those payments, at least as to the property that was Rogers' residence, was Rogers. In this regard, there is no evidence Rogers ever paid rent to Lexington. (Rogers has admitted in this proceeding he has resided since at least 2010 in one of the properties that is in Lexington's name; a creditor moving for relief from stay in Lexington's first case stated that a different property, also owned of record by Lexington, was Rogers' residence at that time.)

From the foregoing, the court makes the following findings. Rogers is and at all times since its incorporation has been the sole officer, director, and shareholder of Lexington; for at least several years, and probably since its incorporation, Lexington's business address has been Rogers' home address; Rogers has had sole control of all decisions made on behalf of Lexington since at least August of 2008, if not from the time he incorporated it in 2007; that to the extent Lexington engaged in any business operations, they were managed solely by Rogers; that Rogers has transferred to Lexington at least five real properties on which Rogers has remained solely liable on the mortgage debt; that the decisions to make those transfers and to make them at particular times were made solely by Rogers; and that there is no evidence Lexington ever paid Rogers any consideration for those transfers. The court also finds that there is no evidence Lexington ever had any income; that there is no evidence Lexington paid expenses it, as opposed to Rogers, had incurred; that there is evidence Lexington made a large number of payments and/or other transfers out of its bank account; that there is no evidence anyone other than Rogers directed the making of those payments and transfers; that Rogers permitted Lexington to have its corporate powers suspended by the Secretary of State; that Rogers caused Lexington to borrow $200,000 from Sheryl Madison while Lexington was in an open chapter 7 case and without court approval or the trustee's knowledge; and that Rogers caused Lexington, within one month of its receiving the $200,000, to transfer all of those funds to himself or TCB, a limited liability company owned 100% by Rogers, also when Lexington was in an open chapter 7 case. The court also finds that at no time has Lexington had significant assets other than the real properties transferred to it by Rogers, the $200,000 loaned to it by Sheryl Madison, and the agreement of TCB to repay the same $200,000 subsequently loaned to TCB by Lexington; that at no time has Lexington had the financial ability to service the debt on the real properties Rogers transferred to it, to insure those properties, or pay the taxes on them; that Rogers defaulted for over five years (for two of them) and almost four and one-half years (for the third) on his personal obligations to make monthly mortgage payments on the debts secured by the three properties he transferred to Lexington that were disclosed in Lexington's 2012 case; and that Lexington has had no source of income, no business operations, and no discernible business purpose other than to hold bare legal title to the five real properties transferred to it by Rogers. The court also finds that Rogers caused Lexington to receive significant deposits into its bank account and to make significant payments and/or other transfers out of its bank account throughout 2011, when Lexington was in an open chapter 7 case; and that Rogers has failed to demonstrate that the deposits into the account constituted Lexington's assets or that the payments and transfers made out of the account were for expenses incurred by Lexington or were otherwise for Lexington's benefit. The court further finds that Rogers misrepresented for his own benefit the value of the real properties in Lexington's name either to the Tracy City Council or the bankruptcy court in 2013; and that Rogers failed to cause Lexington to make complete and accurate disclosures on its bankruptcy schedules and statement of affairs in its two cases.

It is a fair inference, although not necessary to this decision, that with respect to Lexington's first bankruptcy case, Rogers did all that to segregate the real properties, on which he owed significant amounts, from his other assets. It is

also a fair inference that Rogers' motivation for the second Lexington bankruptcy was to induce the trustee in this case to walk away from the $200,000 or to force a significantly reduced settlement. Although that inference is not necessary to this decision, Rogers' comments on the point are significant to the alter ego issue. In a second letter to the Tracy City Council, also dated April 1, 2013, Rogers stated that Lexington's bankruptcy filing (the second one) "was done to protect the investors" (Exhibits, Ex. 7, p. 113); specifically, Sheryl Madison.

> Some months later [after Sheryl Madison made the $200,000 loan] I became aware of the issue concerning Sheryl Madison's previous bankruptcy and the attempt of the trustee to ultimately retrieve some of these loan funds. After consultation with legal council [sic] we determined that the best course of action was to file the bankruptcy of Lexington Consulting, Inc., (the loan guarantor to Sheryl Madison's note) and negotiate an agreement between the two courts [sic] appointed trustees. . . . This has worked very well and we are currently in the middle of negotiating an amicle [sic] solution. The trustee has indicated they will agree to a minimal pay down on the Lexington loan and a full dismissal for Mrs. Madison's bankruptcy without further recourse.

Id.[15] Rogers went so far as to have Sheryl Madison write to the City Council:

> Mr. Rogers has brought it to my attention that the City is looking at his past and present dealings. As to the Lexington bankruptcy, Mr. Rogers was gracious enough to take on my problem as his own. He has done an outstanding job of dealing with the situation in a very professional manner. His extensive knowledge and ability to work through any situation is why I trust him with my money. I have invested with him thousands of dollars with no reservations. . . . Mr. Rogers has worked on this situation for some months free of charge and has developed a solid proposal that will probably be settled in a matter of weeks. He sacrificed his corporation, Lexington Consulting, Inc. and his own money to help me solve a very horrific problem of mine. This is his character.

Exhibits, Ex. 7, p. 155.

Thus, Sheryl Madison viewed the investment as an investment "with him"; that is, with Rogers, and she relied on his knowledge and ability. She even refers to him as having taken on her problems as his own. There is no indication she was relying on Lexington's assets or its business operations for repayment of the loan. The loan from Madison had no relationship to Lexington's only assets – the three real properties Rogers had transferred to it. Rogers has not satisfactorily explained why the money went into Lexington's account in the first place.[16] Further, the money having almost immediately been transferred to TCB, Rogers has offered no explanation why, if in fact he wanted to protect Madison from the trustee in her case, he put Lexington into bankruptcy, as opposed to TCB. The court finds that Rogers manipulated his entities, and their assets and liabilities, for his own purposes rather than for any separate and distinct corporate purposes.

The court concludes that there is such a unity of interest and ownership between Rogers and Lexington that the individuality, or separateness, of the two never existed; that adherence to the fiction of the separate existence of Lexington would sanction a fraud or promote injustice; that Rogers caused his and Lexington's funds to be commingled and not separately accounted for; that he has failed to show the source of the funds deposited into Lexington's account (except for Sheryl

Madison's $200,000 transfer) as being assets of Lexington; that he diverted funds held in Lexington's account to his personal use or the use of one of his other entities; that he failed to maintain an arm's length relationship between himself and Lexington; and that he failed to separate the assets and liabilities of the one from the assets and liabilities of the other. In short, the court concludes that the trustee has met his burden of producing evidence showing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law that Rogers was and is the alter ego of Lexington. Thus, the court will consider whether Rogers has shown specific facts to support the existence of a genuine issue of fact for trial.

"When the moving party has carried its [initial] burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (citations omitted) (footnote omitted). "A genuine dispute arises if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." California v. Campbell, 319 F.3d 1161, 1166 (9th Cir. 2003) (citation omitted) (internal quotation marks omitted). "A scintilla of evidence, or evidence that is merely colorable or not significantly probative, is not sufficient to present a genuine issue as to a material fact." United Steel Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989) (citation omitted) (internal quotation marks omitted).

The court will take Rogers' arguments in the order presented. He contends, first, that "the mere ownership of all the stock and control and management of a corporation by one or more individuals is not by itself sufficient" (Opp'n at 6:19-20) to impose alter ego liability. There is authority for that proposition (see Maxwell Cafe, Inc. v. Department of Alcoholic Beverage Control, 142 Cal. App. 2d 73, 78 (1956)); however, it is not relevant here, where there are other significant reasons for disregarding the separate existence of Lexington, including the lack of a reason for that existence except as the holder of bare legal title to properties for practical purposes belonging to Rogers, the lack of any income generated by those properties (at least the lack of any income reported on Lexington's bankruptcy schedules or to its trustees or the bankruptcy court), the lack of any ability to maintain those properties or to service the debt against them, and Rogers' use of Lexington's bank account for the deposit of funds from sources that were not Lexington's property and for the payment of expenses other than Lexington's.

Second, Rogers claims there was no bad faith conduct on his part, since "[t]he funds are all traceable to the use and benefit of the entities involved [presumably, Lexington and TCB], not . . . Rogers." Opp'n, at 7:8-9. As far as the $200,000 at issue in this proceeding is concerned, Lexington was nothing more than a conduit – Rogers in essence passed the money through Lexington to TCB, transferring the money from Lexington's account to open TCB's new accounts just 21 days after it was deposited into Lexington's account. There is no suggestion the funds were to be used for any purpose related to any of the three real properties Lexington then owned, and no indication they were in fact so used. Rogers has made no showing that Lexington benefitted in any way from the $200,000 except that it received an agreement from TCB to repay the funds, an agreement that has, as discussed below, turned out to be worthless.

Third, Rogers claims "[n]one of the factors that support a claim of alter ego are present in that the exact transaction was made between Lexington and TCB as the original transaction between Lexington and Sheryl Madison." Opp'n at 7:22-24. The argument is unclear. The court can only assume it is meant to suggest that the

question of alter ego as to Lexington is irrelevant because the funds were almost immediately transferred, on identical terms, to TCB. Thus, apparently, Rogers would have the court simply skip over Lexington as the initial transferee and move directly to TCB, which, as a transferee of the initial transferee, might have a good faith defense under § 550(b)(1). The court rejects this invitation. It was Rogers who decided to have Sheryl Madison loan the funds to Lexington rather than TCB. Rogers admits Lexington was the initial transferee of the funds; as such, Lexington may not assert a good faith defense.[17]

Fourth, Rogers notes that both loans – from Sheryl Madison to Lexington and from Lexington to TCB – are not due until June 30, 2016. He adds: "The plan was by that time the plan would be approved by the City of Tracy, and upon approval of the project there would be development investment and financing for the project, which would allow for repayment of the loan." J. Rogers Decl., filed April 25, 2014 ("Decl."), at 3:7-10. First, that Sheryl Madison agreed to such an extended due date, with no interim payments, does not bind the trustee. The transfer was an unauthorized post-petition transfer, and as such, is voidable regardless of its terms. Further, Rogers advised the City of Tracy on September 19, 2012 that TCB "is not going to continue with the ENRA project" (Exhibits, Ex. 20, p. 556), and had set up another entity, Spirit of California Entertainment Group ("SOC"), to, as he put it, "take over the project." Id. at 3:18.[18] Rogers admits that "[n]o future projects are planned for Tracy's TCB";[19] TCB has no funds (answer to Fact 37); and that "[i]n September 2012[,] SOC formally replaced TCB in continuing with the project known as Tracy's California blast since TCB was 'had no funds to continue.'" Answer to Fact 41. Rogers contends SOC is not obligated to pay TCB's bills (answer to Fact 42), including, presumably, its $200,000 obligation to Lexington. Thus, there is no reason to suppose either Lexington or TCB will be able to repay the loan when it comes due by its terms, on June 30, 2016.

Fifth, the opposition states, "It would also appear that the Trustee has not pursued collection of the loan from TCB in that the trustee in that case recognizes the validity of the transaction with TCB." Opp'n, at 8:4-5. Assuming "the trustee in that case" means Lexington's trustee, the argument fails. First, the trustee in this case (the plaintiff in this adversary proceeding) has pursued collection – he has filed a proof of claim in the Lexington case, which, however, will likely come to naught. (The Lexington trustee has issued a report of no distribution.) Second, the conclusion that the Lexington trustee "recognizes the validity of the transaction with TCB" is pure speculation.

Finally, Rogers' arguments pale in comparison with the other facts, itemized above, supporting the conclusion that Rogers should be held liable as Lexington's alter ego. Thus, the court concludes that Rogers has failed to meet his burden of showing specific facts to support the existence of a genuine issue of fact for trial. As a result, the court concludes that Rogers was and is Lexington's alter ego and is liable for its debts, including its debt to the trustee for Sheryl Madison's unauthorized post-petition transfer of estate funds.

The Motion as Against TCB

Without waiving the right to seek such relief in the future, the present motion does not seek relief against TCB under § 549 or § 550. Instead, the trustee seeks an order requiring turnover of the sum of $57,754.86 pursuant to § 542. The trustee's evidence demonstrates, and TCB does not dispute, that on October 12, 2011, all of the funds in TCB's bank accounts were funds remaining from the opening deposits of $80,000 and $100,000 from Lexington – the same funds Sheryl Madison had

loaned to Lexington.

Section 542(c) provides that "an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate . . . in good faith . . . to an entity other than the trustee, with the same effect as to the entity making such transfer . . . as if the case under this title concerning the debtor had not been commenced." Thus, without waiving the right to make the claim as of an earlier date, the trustee presently contends that as of October 12, 2011 at the latest, TCB had actual knowledge of the debtors' bankruptcy case. On October 12, 2011, this court held a hearing on the trustee's motion to compel the debtors to turn over the life insurance proceeds that had, in turn, been the source of the $200,000 Sheryl Madison loaned to Lexington. Rogers was present in the courtroom for that hearing, at the request of Sheryl Madison. At the conclusion of the hearing, the court granted the motion and directed the debtors to surrender the life insurance proceeds to the trustee, together with an accounting of the disposition of any of the funds not remaining with the debtors. A formal order was entered November 1, 2011. After the hearing, the trustee's counsel met with the debtors and Rogers outside the courtroom.

The trustee concludes from these facts that as of October 12, 2011, TCB, through Rogers, its "sole member, manager and 100% owner . . . at all time[s] pertinent herein" (Resp., answer to Fact 2), was on notice not only of the debtors' bankruptcy case but of the trustee's claim to the insurance proceeds from which the $200,000 loan to Lexington (thereafter loaned to TCB) derived, and is liable for turnover, under § 542(a), of the funds remaining in TCB's accounts as of that date, $57,754.86.

Rogers' testimony in response is this:

> [R]egarding the hearing on the request to reopen the Chapter 7 bankruptcy of Sheryl Lancaster, she ask[ed] me to attend the hearing, which I did. Afterward, I did meet briefly with Mr. Anderson and the Lancaster's. At that time, my understanding was that the Trustee wanted to get funds back from the Lancaster[s] in order to pay the creditors from the insurance proceeds. I understood that the amount of claims was fairly minimal, and that they would determine the claims and then seek repayment. Since she received over $ 400,000 in insurance proceeds and her entire bankruptcy debt was only 90k, I had no idea that in any way would it impact the loan made to Lexington Consulting, Inc, or the subsequent loan from Lexington Consulting, Inc. to Tracy's California Blast, LLC who succeeded to the operation of the project through Mr. Macey.

Decl. at 4:15-25.[20] The trustee's motion stated clearly that the trustee wanted an accounting from the debtors sufficient to allow him to track the insurance proceeds "to their ultimate disposition." Motion to Compel Turnover, filed Sept. 2, 2011, at 3:6-7. In response to the motion, the debtors wrote to the trustee requesting "the list of legitimate creditors that have requested proceeds from the bankruptcy. . . . We need that information, before an answer can be filed in connection to your motion to compel." Trustee's Ex. A., filed Oct. 3, 2011. The debtors also wrote to their then-attorney, enclosing a copy of their accounting of how they had spent the insurance proceeds (and thereby disclosing the $200,000 transfer to Lexington), and stating: "The money is gone as you know, so if any creditors have come forward, we will have to be placed on a pay plan. If none have come forward, we owe no money." Debtors' letter/response re Oct. 12, 2011 hearing, filed Oct. 7, 2011, p. 3.

The fact that Sheryl Madison made the trustee and the court, as well as her then-attorney, aware of her contention that the money was gone undermines Rogers' testimony that he "had no idea" there could be an impact on Lexington or TCB. Indeed, if that were the case, why did Sheryl Madison ask Rogers to attend the hearing? In any event, the argument is a red herring because, regardless of the amount of claims against the estate, Rogers, and therefore TCB, were on notice as of October 12, 2011 that the insurance proceeds were property of the estate.

The court finds that, as of October 12, 2011 at the latest, TCB, through Rogers, had actual knowledge of the debtors' pending bankruptcy case. TCB, through Rogers, also knew the $200,000 loan Lexington received from Sheryl Madison came from the insurance proceeds, and knew the trustee was seeking turnover of the insurance proceeds as property of the estate. Thus, the court concludes TCB had actual knowledge that the funds in its accounts remaining from the $200,000; namely, totaling $57,754.86, were property of the estate. Given that knowledge, TCB's conduct in proceeding to deplete its accounts of those funds was not taken in good faith. In other words, TCB could not have transferred those funds, which were in fact property of the estate, in good faith to any entity other than the trustee. TCB has no defense to the trustee's turnover claim, and the motion will be granted.

The Motion as Against Rogers as Alter Ego of TCB

As regards TCB, Rogers admits the following. At all times relevant to this adversary proceeding, he has been its sole member, manager, and 100% owner. Since TCB's inception, its business address has been on La Montagne Court in Los Gatos, which, since at least 2010, has been Rogers' residence. Rogers testifies in opposition to this motion that he met the managing owner of TCB, Jeff Macey, who was then negotiating with the City of Tracy to develop a motorsports park, in late 2010 or early 2011.[21] Rogers adds that although TCB had entered into the ENRA with the City of Tracy in April of 2011, Macey was struggling with the project. Thus, Rogers states:

> After April 2011, I took over control of TCB from Mr. Macey to move the project forward through Lexington Consulting, Inc. However, the ENRA remained with TCB. The initial costs were funded primarily through Lexington Consulting, Inc. and Mobil Grtow, Inc, another company I have for other income. However, at a later period of time, I then decided that the major funding should be through Tracy's California Blast, LLC.

Decl. at 2:20-24.[22] He continues:

> The original agreement with Sheryl Lancaster was on April 27, 2011 but the payment was not made until June 30, 2011. By this time, I had taken over the project and [TCB] from Mr. Macey, and I opened a checking account at Wells Fargo Bank in the name of [TCB] on July 21, 2011. Since TCB was the lead entity in the project, and expenses for the project were to be paid out of this account, the amount of $ 180,000 was transferred from Lexington Consulting to [TCB] account. In order to protect Sheryl Lancaster, I executed a promissory note for the same amount of $ 200,000 from [TCB] payable to [Lexington] on the same terms and conditions as the original note, since [TCB] was now the developer of the project.

Id. at 5:25-6:9.

These statements alone go a long way toward demonstrating that Rogers should be

held liable as the alter ego of TCB as well as of Lexington. Rogers readily admits he unilaterally decided to transfer money borrowed by one entity (of which he was the sole owner) to another entity (of which he was the sole owner) just days after the money was borrowed by the first entity, leaving the first entity with no assets (except funds in its bank account that Rogers almost certainly was not reporting to Lexington's chapter 7 trustee and three real properties on which Rogers had stopped making mortgage payments three years earlier). Rogers does not suggest he obtained Sheryl Madison's permission to transfer the funds or even that he informed her of the transfer. He also does not indicate why he did not have TCB sign a promissory note in Madison's favor. The court notes in this regard that from 2010 apparently to the present, Lexington has been a suspended corporation, and thus, it lacked the legal capacity to sue TCB to collect on the loan. See V & P Trading Co., Inc. v. United Charter, LLC, 212 Cal. App. 4th 126, 132 (2012). In short, the almost immediate transfer of the entirety of the funds to an entity other than the one to which the loan was made smacks of a failure to segregate the funds of the two entities, and of a failure to maintain arm's length relationships between the two.

Rogers "continued with the TCB project from early 2001 [2011] through 2013." Decl. at 3:16.

> At one point on November 2, 2012, I requested the City of Tracy to enter into a new ENRA with Spirit of California Entertainment Group to take over the project. However, the City council agreed to consider a new ENRA with Spirit, but also continued the ENRA with TCB until a new agreement was confirmed with Spirit. (See Exhibit A, page 1) The current status of the project is that the City has been investigating Spirit of California and its principals for approximately 18 months to ensure a financial protection to its citizens and has not yet approved a new ENRA. It is now the plan of Spirit of California to pursue other properties for a similar development outside the City of Tracy. The current ENRA of TCB with the City is now expired and no other agreements exist.

Id. at 3:17-25.

Rogers is not specific about why he decided to switch the project over to SOC, a newly-formed corporation. He also does not state why the City continued the ENRA with TCB pending its consideration of SOC. The exhibit to his declaration is more revealing. The agenda for the City Council meeting on November 7, 2012, which appears to have been prepared by the City Council's staff, states that the agenda would include consideration of "(1) terminating the existing ENRA based on TCB's failure to meet performance measures of the ENRA and (2) to address a new request to negotiate a new ENRA with a new development entity called Spirit of California for an expanded proposed project on the City-owned [property]." Defendants' Exhibits, filed April 25, 2014, Ex. A, p. 1. More specifically, the agenda noted that Rogers had failed to submit personal financial statements and tax returns, as required by the ENRA; it also noted that TCB was in default of the ENRA "relative to submitting complete development applications and providing financial information to verify their ability to fund the entitlement process and to fund construction of the first phase of the 628 acre project . . . ." Id. at p. 2. Rogers' personal financial statements and tax returns were not the only issue. "The City's consultant was able to verify financial expressions of interest for $1.5 million; however, the investor financial statements submitted had no apparent legally binding commitments to fund the new entity." Id. at p. 3. City staff had also concluded that $1.5 million was insufficient for the first phase of the project.

Despite this negative financial outlook, Rogers proposed that the City, under an ENRA with SOC, consider expanding the acreage of the project and expanding its scope to include, in addition to the motorsports facilities, "amenities such as" a community center, an RV park, a film studio, a golf course, a vintner center, hotels, a marina, a casino, an amusement park, a convention center, an arena, and retail and dining establishments. Id. at p. 4. But as of May 21, 2013, Rogers had still failed to produce any of his personal financial information (see Exhibits, Ex. 7, p. 92), and there is no evidence he has ever done so.

Returning for a moment to TCB, Rogers has submitted with his opposition what he claims is a profit and loss statement for April 26, 2011 (the day before the Sheryl Madison/Lexington loan agreement date) through October 30, 2012. The profit and loss statement shows no income, only expenses, which total $318,517, including land development, pre-development, vehicle costs, legal fees, travel and entertainment, and so on. Rogers provides some detail of the expenses, as follows:

> [A]lthough the Plaintiff has raised the issue of alter ego, there are no expenses included in the accounting that are for any personal expenses for myself. In fact the entries for the accounting overview indicate that the expenses paid by Tracy's California Blast, LLC total $ 184,871.34. This is roughly equal to the transfer of funds from Lexington Consulting to TCB of $ 180,000. However, the total expenses listed total $ 327,094.95 through November 9, 2012. Included is [sic] payments made by Lexington Consulting of $ 18,394.33 and payments by Mobil Grow of $ 68,238.13. Mobil Grow is a bank account that I control consisting of income and investments from other sources which we contributed directly for the expenses of TCB.
>
> The total expenses to date contributed by myself and my various accounts dedicated directly to the project exceed $350,000. Attached as Exhibit D are the expenses incurred by Mobil Grow from April 25, 2011 through July 18, 2011, prior to the receipt of the funds from Lexington Consulting, Inc. which show total deposits into the account of $ 36,585.15. When the funds were transferred by Lexington Consulting, Inc. to Tracy's California Blast, LLC, the sum of $ 20,000 was transferred to me as partial reimbursement of my personal funds.[23]
>
> In addition, there is a cash account which are contributions paid directly for payment to Artisan company by way of investment transfers to Artisan that I am personally responsible [for] in the amount of $ 33,960.

Decl. at 5:8-24.

Rogers apparently views this narrative as supporting a conclusion that alter ego liability would be inappropriate because he (allegedly) did not pay his personal expenses from funds belonging to TCB. However, this testimony strongly suggest a commingling of at least three entities' accountings under TCB's umbrella, plus, apparently, Rogers himself (the cash account). Perhaps more problematic is a balance sheet produced to the trustee and submitted by him in support of the motion. It is entitled "Tracy's California Blast Balance Sheet As of October 30, 2012" (the same date as the ending date of the profit and loss statement); it lists total assets of $2,233 and total liabilities of $21,262. The $2,233 is listed as comprised of funds in bank accounts in the names of "LCI" (Lexington), Mobil Grow, SOCEGi,[24] and "TCBI" (TCB). Under Equity, the balance sheet shows investments totaling $796,205 and draws totaling $496,741, leaving total owner's capital of

$299,463. From that, Rogers has deducted retained earnings of <$200,454>, added a "founding shareholder investment" of $24.50, and deducted net income of <$118,063> to arrive at total equity of <$19,029>. The retained earnings figure, $200,454, and the net income figure, $118,063, total $318,517, the total of the expenses listed on the profit and loss statement [25] Conspicuously missing from the balance sheet is TCB's debt to Lexington.

Rogers has offered no explanation of what the $796,205 in investments were, who took the $496,741 in draws, where the draws went (into SOC? to Rogers himself?), or why they were taken when taking them would leave TCB completely unable to repay its debt to Lexington. The court concludes that TCB, like Lexington, never had any income, only (apparently) loans and/or investments. Some of those investments were lost to expenses, and some were withdrawn, leaving TCB virtually bankrupt. Rogers' assessment of the situation is benign. He states: "The fact that the project proved to be unfeasible [sic] should have no bearing on the issue of alter ego, since many businesses fail for one reason or another. Here the need to do feasibility work on the project was clearly necessary to move the project forward, and attract additional funding or investment if the plans were feasible." Opp'n, at 8:17-20.

In fact, Rogers did continue to try to move the project forward and to attract additional funding. When the Tracy City Council tired of TCB, due apparently in no small part to Rogers' failure to produce personal financial information, Rogers left TCB behind and created yet another entity, SOC, funded from unidentified sources. (Rogers has stated in answers to interrogatories that SOC has 26 shareholders; he declined to identify them on grounds of privacy and confidentiality.) He does not explain why he chose not to re-capitalize TCB instead. Rogers testified SOC had capitalization of $86,433 as of July 2, 2013, and approximately $200,000 in the bank as of that date. (Why the latter figure exceeded the former is not explained.) Asked to state the dates of and attendees at all board of directors meetings, Rogers replied, "Board meeting[s] were held informally as needed since the incorporation with the two officers. Exact dates are reference by resolutions, if any adopted at the meetings." Trustee's Exhibits, Ex. 22, p. 589.[26] Given that Rogers is the custodian of SOC's corporate minutes, his response concerning board meetings strongly suggests there have been none, or at any rate, that no records have been maintained.

Nevertheless, as late as July of 2013, Rogers testified in answers to interrogatories that SOC was "studying the feasibility of the Tracy's California Blast, LLC project currently before the City of Tracy." Trustee's Exhibits, Ex. 22, p. 592. When asked to state TCB's plan to pay off its debt to Lexington, Rogers answered, "If the project in Tracy gets funded or approved or if it [TCB] acquires funds within the next three years, it will retire the debt or transfer the debt." Id. at 588-89. This suggests, albeit vaguely, that Rogers views TCB's debt to Lexington as transferred to SOC. Whether that is accurate or not, the court finds from all of these facts that Rogers failed to segregate the ownership of the opportunity that was the Tracy project as an asset of any one of his entities or of himself, but viewed it as an asset of himself and those entities – including Lexington, TCB, and SOC – as a whole. He failed to segregate the expenses of each entity for its own purposes from those of the others, instead utilizing whatever funds were available to pay expenses. It appears he paid some of the project's expenses through Lexington's bank account and others through TCB's account. He had no hesitation about transferring the $200,000 Lexington borrowed from Sheryl Madison to TCB, but he continued to make deposits into and write checks out of Lexington's account. The court also finds he failed to observe legal formalities and failed to

maintain arm's length relationships among the entities and himself. The court concludes that there is such a unity of interest and ownership between Rogers and TCB that the individuality of TCB as a separate entity never existed, and that adherence to the fiction of its separate existence would sanction a fraud or promote injustice. As a result, the motion will be granted, and the court will impose liability on Rogers as the alter ego of TCB.

The court will hear the matter.

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1 The funds were transferred to Lexington by way of a cashier's check purchased by debtor Sheryl Madison Lancaster, aka Sheryl Madison.

2 The actual funds transfers took place on June 30, 2011 (Sheryl Madison to Lexington) and July 21, 2011 (Lexington to TCB).

3 All statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

4 Lexington has not answered the trustee's complaint or otherwise appeared in the action, and is not a party to this motion.

5 In support of his motion, the trustee submitted a copy of Lexington's petition in a second chapter 11 case, discussed below, along with copies of the schedules and statements filed by Lexington in that case, declarations filed in support of relief from stay motions in that case, and declarations of Rogers filed in that case. Rogers has not objected to the court's consideration of any of those documents. Lexington's petition in that chapter 11 case disclosed a prior bankruptcy case it had filed, Case No. 08-54532. Pursuant to Fed. R. Evid. 201(c)(1), incorporated herein by Fed. R. Bankr. P. 9017, the court may take judicial notice on its own, even when not asked to do so by a party. Thus, here, the court takes judicial notice of the documents filed in Lexington's 2008 bankruptcy case as well as its 2012 case. Although a court "may not take judicial notice of hearsay allegations as being true merely because they are part of a court record or file" (2 Russell, Bankruptcy Evidence Manual § 201:5, p. 55 (West 2013-2014 ed.)), here, the court takes judicial notice of documents in Lexington's bankruptcy cases not for the purpose of determining the truth of the matters asserted in them, but to determine what Rogers, signing Lexington's bankruptcy documents under oath, disclosed in them and what he failed to disclose. Thus, the hearsay rule is not implicated. Further, a court may take judicial notice of court documents despite the fact that neither party to the pending motion has cited them or made them part of the record. See Wetherbee v. Willow Lane, Inc. (In re Bestway Prods.), 151 B.R. 530, 539-40 (Bankr. E.D. Cal. 1993). Finally, the court's analysis of the 2008 case is additional support for, not determinative of, its conclusions; that is, the outcome of the motion would be the same even without consideration of the 2008 case.

6 J. Rogers Decl., filed Oct. 5, 2008 in Northern District Case No. 08-54532 (docketed as Brief/Memorandum), at 2:12-14.

7 Rogers had indicated on the Rogers to Lexington grant deeds recorded just two weeks before the filing of Lexington's bankruptcy petition that transfer taxes were paid on the transactions, which suggests the prices paid by Lexington to Rogers to purchase the properties were greater than $0. Yet there was no indication in Lexington's statement of affairs of any money paid or other consideration transferred to Rogers for the two residences.

8 A motion for relief from stay in the 2012 case revealed that one of the properties listed in that case – on La Montagne Court in Los Gatos, had been transferred by Rogers to Lexington by grant deed signed July 23, 2008 and recorded August 7, 2008. Yet that property was not scheduled by Rogers in Lexington's bankruptcy case filed August 19, 2008 – not on the original Schedule A and not on either of the two amended versions. Rogers has admitted in this adversary proceeding that he has resided in the La Montagne Court property since at least 2010.

9 The court notes that, although the Lexington trustee had filed his report of no distribution as early as September of 2010, Lexington remained in an open chapter 7 case, with no authority to conduct business of any kind, on July 21, 2011, when Lexington loaned to TCB the $200,000 it had received from Sheryl Madison.

10 Roughly one month after the bankruptcy filing, Rogers filed an amended statement of affairs on which he added as a transfer the $200,000 purported loan by Lexington to TCB.

11 The $1,300,000 debt to Rogers, listed on Lexington's Schedule F in its 2008 case as money lent by Rogers between 2005 and 2008, also simply disappeared.

12 Exhibits, Ex. 7, p. 95 (emphasis added).

13 Lexington's Schedules G in both the 2008 and 2012 cases showed no unexpired leases; thus, presumably, the real properties held in Lexington's name generated no income. Lexington's monthly operating reports in the 2008 case, all signed under oath by Rogers as responsible individual, disclosed no income or expenses at all. (For the first 14 months of the case, the monthly operating reports consisted only of a balance sheet – the same one, filed month after month, with no income and expense statement. Beginning the 15th month of the case, Rogers added a statement of operations and a statement of cash receipts and disbursements, both filled with nothing but zeroes.) Lexington's 2012 case was converted so quickly that Lexington never filed a monthly operating report.

14 Rogers gives conflicting explanations of the $20,000. In his declaration, he states:

"When the funds were transferred by Lexington Consulting, Inc. to Tracy's California Blast, LLC, the sum of $ 20,000 was transferred to me as partial reimbursement of my personal funds." Decl. at 5:19-21. In contrast, his memorandum of points and authorities states: "The consideration paid to TCB was $ 180,000 directly and $ 20,000 indirectly for the benefit of James B. Rogers as a loan, who subsequently paid back TCB the $ 20.000." Opp'n at 7:8-9.

15 This letter also reveals another asset alleged by Rogers to be an asset of Lexington that he did not list on its schedules or, as far as this court can tell, mention in any way in the bankruptcy case. "Upon filing the BK there was no unsecured debt in the corporation other than Sheryl Madison. There is though, contingent assets owed to Lexington Consulting, Inc. by LHJS[,] a previous investor/lender. . . . I am utilizing the assistance of the bankruptcy court to compel LHJS to provide funds owed to Lexington's subcontractors that have not been paid." Id. (There were no subcontractors listed on Lexington's schedules.)

16 In his second April 1, 2013 letter of explanation to the Tracy City Council, Rogers stated: "I told [Sheryl Madison] I could not take in her investment funds

unless it was in the form of a loan in a separate entity. This was due to the [TCB] not having a private Placement Memorandum drafted or registered by the Securities and Exchange Commission." Exhibits, Ex. 7, p. 113. This statement does not make much sense, because so far as the court can tell, it would have applied equally to Lexington. However, the court need not determine why Rogers routed the money through Lexington.

17 "Under § 550(a), '[t]he trustee's right to recover from an initial transferee is absolute.'" Schafer v. Las Vegas Hilton Corp. (In re Video Depot), 127 F.3d 1195, 1197-98 (9th Cir. 1997). The good faith defense available to transferees of an initial transferee is not available to an initial transferee. Id. at 1198.

18 Although the articles of incorporation of SOC were signed by an individual named Meghan Record, Rogers was listed as the initial agent for service of process. On May 10, 2013, Rogers signed a Statement of Information for filing with the Secretary of State, listing his home address as the address of SOC's principal executive office and himself as its CEO, secretary, sole director, and agent for service of process.

19 Defendants[']' Response to Statement of Undisputed Facts, filed April 25, 2014 ("Resp."), answer to Fact 36.

20 The hearing was on the trustee's motion to compel the debtors to turn over the insurance proceeds, not his motion to reopen the case, which had been granted four months earlier.

21 Rogers states: "At the time I met Mr. Macey, I was working with my company Lexington Consulting Inc. . . ." Decl., at 2:14-15. As has been seen, at that time, Lexington was in an open chapter 7 case. Although nothing was going on in the case, it did not close until January 6, 2012. Rogers has provided no indication of what "work" he was doing with Lexington at that time, and he has not suggested the Lexington chapter 7 trustee was aware of that work.

22 Again, when Rogers was "funding the initial costs" of the project through Lexington, Lexington was in an open chapter 7 case (Lexington's first case), yet there is no evidence its chapter 7 trustee was made aware of the flow of funds. Moreover, when Rogers caused Lexington to file its second bankruptcy petition, on April 26, 2012, he did not mention the project in the bankruptcy schedules or in any other way in the case, although, since he funded the initial costs, in or after April 2011, through Lexington, there should have been some mention of the project or those costs somewhere in the bankruptcy paperwork. When asked by the trustee in this proceeding to admit that at the time of the Sheryl Lancaster/Lexington loan agreement (April 27, 2011), Lexington had a zero or negative net worth, Rogers responded: "Value was ongoing project since April 2011." Resp., answer to Fact 24. If the ongoing project constituted an asset of Lexington, as Rogers now claims, its transfer, loss, or other disposition within the one year prior to Lexington's second bankruptcy filing was required to be disclosed somewhere on Lexington's statement of financial affairs – it was not.

These points do not bear on the motion as against TCB; however, they are additional support for the court's conclusions regarding Rogers and Lexington, above.

23 This refers to the funds from the Sheryl Madison loan used to purchase a vehicle for Rogers personally.

24 SOC's full name is Spirit of California Entertainment Group, Inc.

25 The court has not undertaken to determine which of the $318,517 in expenses Rogers has characterized as retained earnings and which as net income.

26 Rogers is SOC's president and CEO; the project's accountant is SOC's vice-president and treasurer.

37.	14-23128-D-7 MMN-1	ABDELLA ALI	MOTION TO AVOID LIEN OF AMERICAN EXPRESS 5-6-14 [10]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by an entity identified in the motion only as American Express (the "creditor"). In fact, according to the abstract of judgment filed as an exhibit, the lienholder is American Express Bank, FSB, an FDIC-insured institution. The motion will be denied for the following reasons. First, the notice of hearing purports to require the filing of written opposition 14 days before the hearing date, whereas the moving party gave only 22 days' notice of the hearing, rather than 28 days', as required by LBR 9014-1(f)(1) for notices of this type.

Second, the moving party served the creditor (1) to the attention of a named CEO at the address of CT Corporation System; and (2) at a post office box with no attention line. The first method was insufficient because although CT Corporation System is the registered agent for service of process of American Express Company and American Express Centurion Bank, the court has no evidence on which to conclude that either of those is the same entity as American Express Bank, FSB. According to the FDIC's website, the two banks have different FDIC certificate numbers and were established on different dates. (That is, it appears they are different entities.) In short, there is insufficient evidence the actual lienholder was served. (American Express Bank, FSB is not listed with the Secretary of State as having a registered agent for service of process. Even if it did, service through the agent for service of process would be insufficient because the rule requires service to the attention of an officer of the bank, whereas it is unlikely an officer of the bank is to be found at the office of a corporate agent for service of process.) The second method was insufficient because (1) there is no evidence the "American Express" that was served was American Express Bank, FSB, the actual lienholder; and (2) service was made with no attention line, whereas the applicable rule requires service on an FDIC-insured institution to the attention of an officer. See Fed. R. Bankr. P. 7004(h).

Third, the proof of service does not sufficiently evidence the manner of service, stating only that service was made "by placing a true and correct copy thereof in a sealed envelope addressed as follows." That is, the proof of service does not state whether the envelope was thereafter sent by U.S. Mail with postage prepaid or was otherwise served. (Further, there is no indication service was made by certified mail, as required for service on an FDIC-insured institution.)

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

38. 14-23128-D-7 MMN-2 — ABDELLA ALI — MOTION TO AVOID LIEN OF CITIBANK 5-6-14 [15]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Citibank, N.A. (the "creditor"). The motion will be denied for the following reasons. First, the notice of hearing purports to require the filing of a written opposition 14 days before the hearing date, whereas the moving party gave only 22 days' notice of the hearing, rather than 28 days', as required by LBR 9014-1(f)(1) for notices of this type.

Second, the proof of service does not sufficiently evidence the manner of service, stating only that service was made "by placing a true and correct copy thereof in a sealed envelope addressed as follows." That is, the proof of service does not state whether the envelope was thereafter sent by U.S. Mail with postage prepaid or was otherwise served (although it does indicate that Citibank was served by certified mail).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

39. 14-23128-D-7 MMN-3 — ABDELLA ALI — MOTION TO AVOID LIEN OF GOLDEN 1 CREDIT UNION 5-6-14 [20]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by the Golden 1 Credit Union (the "creditor"). The motion will be denied for the following reasons. First, the notice of hearing purports to require the filing of a written opposition 14 days before the hearing date, whereas the moving party gave only 22 days' notice of the hearing, rather than 28 days', as required by LBR 9014-1(f)(1) for notices of this type.

Second, the proof of service does not sufficiently evidence the manner of service, stating only that service was made "by placing a true and correct copy thereof in a sealed envelope addressed as follows." That is, the proof of service does not state whether the envelope was thereafter sent by U.S. Mail with postage prepaid or was otherwise served.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

40. 13-20833-D-11 — RAVINDER GILL — STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION 1-22-13 [1]

Final ruling:

This status conference has been continued by order dated May 20, 2014 to June 5, 2014, at 10:30 a.m.

41. 13-35671-D-11 CARLYLE STATION LLC — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-13-13 [1]

This matter will not be called before 10:30 a.m.

42. 13-35671-D-11 CJJ-3 CARLYLE STATION LLC — CONTINUED MOTION TO RECONSIDER ORDER GRANTING RELIEF FROM STAY
O.S.T.
5-6-14 [144]

This matter will not be called before 10:30 a.m.

43. 13-35671-D-11 UST-2 CARLYLE STATION LLC — CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
4-15-14 [126]

This matter will not be called before 10:30 a.m.

44. 14-23574-D-7 JIMMIE MURILLO — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-5-14 [29]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

45.	14-24788-D-11	CHRISTIAN/AMANDA BADER	PRELIMINARY STATUS CONFERENCE RE: VOLUNTARY PETITION 5-6-14 [1]
46.	14-25148-D-12 MF-1	HENRY TOSTA	MOTION FOR ORDER AUTHORIZING JOINT ADMINISTRATION OF RELATED CHAPTER 12 CASES O.S.T. 5-16-14 [6]

This matter will not be called before 10:45 a.m.

47.	14-25150-D-12 MF-1	HENRY TOSTA, JR. FAMILY, L.P.	MOTION FOR ORDER AUTHORIZING JOINT ADMINISTRATION OF RELATED CHAPTER 12 CASES O.S.T. 5-16-14 [5]

This matter will not be called before 10:45 a.m.

48.	13-35671-D-11 CJJ-3	CARLYLE STATION LLC	MOTION FOR APPROVAL OF STIPULATION O.S.T. 5-19-14 [175]

This matter will not be called before 10:30 a.m.