**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**July 31, 2017 at 10:00 a.m.**

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

**6, 8, 10**

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

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

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

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

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

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

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON AUGUST 28, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 14, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 21, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

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

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

***MATTERS FOR ARGUMENT***

1. 09-44733-A-7 ROBERT WIEMER — MOTION TO SELL
HCS-2 — 7-3-17 [238]

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for $20,000 the estate's interest in real property in Fair Oaks, California and the estate's interest in two entities, a general partnership and a limited partnership, both named Cheechako, to Larry Odbert. The trustee is uncertain about the estate's precise interest in the assets. According to the debtor, the real property, the site of an old gas station, is subject to cleanup and environmental remediation under the authority of the State of California and the federal government. The preliminary title report for the real property indicates that the general partnership owns the real property. The trustee is not certain of the estate's interest in the property. The trustee knows nothing about the cost of the cleanup and remediation of the property. Nonetheless, the buyer is willing to purchase whatever interest the estate may have in the property.

The trustee has discovered information that the debtor has some interest in the two partnerships, but she is not certain about what is that interest or what is the value or financial condition of the partnerships. Nonetheless, the buyer is willing to purchase whatever interest the estate may have in the entities. The buyer is assuming any obligations or liabilities of the partnerships, without a right for reimbursement from the estate.

The sale is "as is," "where is," and without warranties.

The trustee asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h). The trustee also asks for approval of a breakup fee in the amount of $5,000 to the buyer.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The sale will generate some proceeds for distribution to creditors of the estate. Given the uncertainties over the ownership, value, encumbrances, and condition of the assets, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will approve the breakup fee to the buyer. The sale is approved subject to any competing ownership claims, encumbrances, liabilities, liens, or any other claims.

By granting this motion, the court is not making any determinations about the extent, validity, or priority of anyone's interest in any of the assets being sold.

2. 15-24537-A-7 TAMARA RIGBY — OBJECTION TO EXEMPTIONS
ADJ-2 — 6-12-17 [36]

**Tentative Ruling:** The objection will be overruled.

The trustee objects to the debtor's "Utah Code Ann. § 78B-5-505(1)(a)(x)" exemption claim in a class action medical device injury claim settlement award, asserted in an Amended Schedule C filed on May 13, 2017. Docket 30. The sole

allegation is that debtor concealed the claim, which the trustee argues amounts to bad faith warranting disallowance of the exemption.

The debtor opposes the objection.

The debtor underwent a surgical medical procedure in February 2002. After the surgery, the debtor suffered a pelvic organ prolapse, which led to her agreeing to have a mesh implanted. The mesh was implanted in April 2002. She developed complications from the mesh and it was removed in October 2002. Pursuant to an advertisement about mass tort litigation involving the mesh, the debtor contacted a law firm specializing in such litigation sometime in 2011 or 2012. Subsequently, the debtor received a letter from the law firm, telling her that she is ineligible to be part of the mesh class action litigation. She called the law firm and was informed that her ineligibility was due to the fact that the mesh had been removed from her. Docket 44.

In early 2013, the debtor was contacted by a law firm. The debtor is not certain if this was the same as the previous or another law firm. This time, she was asked to provide her medical records for a determination of her eligibility to be part of the mesh class action. She mailed her medical records in May 2013. She also executed a power of attorney and employment agreement with the law firm. Docket 39, Ex. A. She did not hear back from the law firm about her claim or eligibility to be part of the class action. Docket 44.

In February 2014, the debtor and her family moved from Utah to California. Shortly after the debtor separated from her husband. The debtor's financial situation worsened, eventually leading to her filing this chapter 7 bankruptcy case on June 4, 2015. Docket 44.

The debtor asserts that at the time of filing she did not believe to be entitled to participate in the mesh class action. Docket 44. The debtor's original schedules and statements, including Schedule B, Schedule C, and the Statement of Financial Affairs, omit any reference to the class action litigation. Docket 1. The trustee filed a report of no distribution on August 6, 2015. The debtor received her discharge on October 19, 2015. Docket 16. The case was closed on October 23, 2015. Docket 18.

On or about September 2, 2016, the debtor received a request for the completion of an affidavit regarding the mesh action settlement. She claims not to have been informed of her eligibility for recovery at that time. Docket 44 ¶ 7. She claims to have become aware only at that time that she "may have" a claim. Id. In January 2017, the debtor was notified that she could receive a payment from the mesh class action settlement. Docket 44 at 3. She contacted her bankruptcy attorney about this. Her attorney told her to get back to him if and when she knows how much she would receive. Id. The debtor says that in or about May 2017 she discovered that she would receive $70,000 on account of the pre-petition injuries she sustained due to the mesh implant. She contacted her bankruptcy attorney who prepared and filed on May 13, 2017 Amended Schedule B and Amended Schedule C, disclosing the award as an asset and exempting it. Docket 30; Docket 44 at 3.

On May 5, 2017, the U.S. Trustee filed a motion to reopen the case. Docket 20. The trustee's declaration in support of that motion states that the Settlement Alliance and the debtor's personal injury counsel advised her on or about May 1 that the debtor will be offered a personal injury award of $70,000. Docket 21. The order reopening the case was entered on May 5, 2017. Docket 23. The trustee filed a notice of assets on May 9. The debtor's Amended Schedules B

and C were filed on May 13. Docket 30.

Fed. R. Bankr. P. 4003(b)(1) provides that:

"*[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.*"

This objection is timely as it was filed within 30 days after the debtor amended Schedules B and C on May 13. The objection was filed on June 12. Docket 36.

The objection will be overruled primarily because of Law v. Siegel, 134 S.Ct. 1188 (2014), where the Supreme Court held that federal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Bankruptcy Code, and specifically including bad-faith conduct based on the court's equitable powers.

In Law, the debtor had fraudulently concealed non-exempt equity in his real property by representing that such equity was subject to a lien created by a fraudulent transfer, which the trustee sought to avoid and the trial court eventually determined to be a fiction. On the basis of the debtor's fraud, the trustee also sought to surcharge the debtor's $75,000 California homestead exemption in the property, asserted under Cal. Civ. Proc. Code § 704.730(a)(1).

"*[The trustee] Siegel points out that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor's fraudulent concealment of the asset alleged to be exempt. [. . . .] He suggests that those decisions reflect a general, equitable power in bankruptcy courts to deny exemptions based on a debtor's bad-faith conduct. For the reasons we have given, the Bankruptcy Code admits no such power.*"

Law at 1196.

Nor has the trustee here given the court an independent Utah state legal authority for permitting the disallowance of the subject exemption pursuant to the alleged concealment.

"*It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption.*"

Law at 1196-97.

The objection's statement that "*[u]nder Utah law, a debtor is not entitled to a claim of exemption on an asset which he or she knowingly concealed and failed to disclose on his or her original schedules and then later attempts to claim as exempt*," is not supported by the two cited cases –– In re Grogan, 300 B.R. 804, 807 (Bankr. D. Utah 2003) and Gillman v. Ford (In re Ford), 492 F.3d 1148, 1157 (10th Cir. 2007). Docket 36 at 4, ¶ 14.

Grogan allows for bad faith disallowance of an exemption based on Calder v. Job (In re Calder), 973 F.2d 862, 867 (10th Cir. 1992), which cites merely other federal case law for the same rule. The same is true with respect to Ford.

There, the Tenth Circuit simply cites to Grogan. Ford at 1157.

In other words, the objection provides no independent legal authority under Utah law for disallowance of the exemption on bad faith grounds. The cited cases, which pre-date Law, are applying the bad faith exemption disallowance rule stricken by Law. All cases that cite Grogan pre-date Law. Some of the cases post-dating Law that cite Ford even recognize that Law superceded Ford.

"*In the past courts have conditioned a debtor's right to amend her schedules on good faith. See e.g., In re Ford, 492 F.3d 1148, 1155 (10th Cir. 2007) (amendment may be denied if there is bad faith); In re Calder, 973 F.2d 862, 867 (10th Cir. 1992) ('An amendment may be denied, however, if there is bad faith by the debtor or prejudice to creditors.'); In re Yonikus, 996 F.2d 866, 872 (7th Cir. 1993) (recognizing bad faith exception to permissive amendment under Rule 1009(a)). The 'bad faith' exception recognized in these cases has been overruled by Law v. Siegel, 134 S.Ct. 1188 (2014). Thus, there is no 'good faith' gloss on a debtor's right to amend, in either an open or a reopened case.*"

In re Smith, Case No. 13-11237-ta7, 2014 WL 7358808, at *5 (Bankr. D.N.M., Dec. 24, 2014).

Grogan and Ford have been superceded by Law.

In short, the trustee's sole argument for disallowance of the exemption here — bad faith based on concealment — runs directly afoul to the holding in Law. Bad faith, whether based on intentional or unintentional concealment, is a creature of the court's equitable power and is not sanctioned by statutory authority or at least statutory authority raised in the subject motion.

Next, even if Law was not an obstacle to sustaining the objection, the objection would still be overruled as the court is not convinced that bad faith exists. The debtor's delay in scheduling and exempting the award, if any, did not amount to concealment or other egregious conduct.

Bad faith is determined by examining the totality of the circumstances. See, e.g., In re Snyder, 509 B.R. 945, 950 (Bankr. D.N.M. 2014); see also In re Svetc, 521 B.R. 892, 907 (Bkrtcy. W.D. Ark. 2014); In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

In deciding bad faith challenges, "*[t]he bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present.*" Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

About three years prior to the filing of this case (in about 2012), the debtor had been unequivocally told by a law firm litigating a mesh class action that she was ineligible to partake in the litigation. Knowing this, it was not unreasonable for the debtor not to schedule a claim based on the mesh litigation.

The law firm that contacted her for the medical records, with which she executed an agreement, did not tell her that she had a claim in the mesh class action. They could not have because they had not yet even seen her medical records. More, the debtor's last pre-petition contact with the law firm was

over two years pre-petition. As of the petition date, the debtor had not heard anything from the firm for over two years. The last pre-petition contact between the debtor and the firm was in May 2013 and this case was filed on June 4, 2015. The debtor heard nothing from the firm during this time.

The court also takes into account that, during this time, the debtor underwent significant life changing events. She moved from Utah to California and separated from her husband, changing her address and apparently her name. Docket 1 at 1.

There was no misrepresentation in the debtor not mentioning the mesh litigation in her petition. Nor was there anything else egregious with regard to this.

The debtor's next contact with that firm was not until September 2016, about 11 months after the debtor received her bankruptcy discharge. Docket 44 at 2. The debtor was contacted by the firm again in January 2017, telling her that she "could receive a payment" from the mesh action settlement. Docket 44 at 3. It was then that the debtor contacted her bankruptcy attorney. Id. Even then, the debtor was not certain that she would receive anything from the settlement. The trustee's own declaration in support of the motion to reopen the case says that on or about May 1, 2017 she was contacted by the debtor's personal injury counsel and the Settlement Alliance apprising her that "the debtor is their client and will be offered a personal injury award of $70,000." Docket 21 at 1.

In other words, the debtor was not yet offered the award when the trustee was apprised of it, on or about May 1. And, the trustee was apprised of the award by the debtor's own counsel. The debtor amended her Schedules B and C to disclose and exempt the award on May 13, only about 12 days after the trustee was apprised.

This is not bad faith. Although the debtor could have amended the schedules to disclose the claim in September 2016 or January 2017, the delay of amending the schedules is just that, a delay. It does not amount to concealment, misrepresentation, or other egregious conduct, especially given that as of May 1, 2017 the debtor had not been offered the award yet and it was the debtor's counsel who apprised the trustee of the settlement award. The objection will be overruled.

3. 17-23548-A-7 MARY RODRIGUEZ
MS-1
VS. LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

MOTION TO AVOID JUDICIAL LIEN
5-26-17 [5]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of California State Labor Commissioner for the sum of $75,044 on May 13, 2015. The abstract of judgment was recorded with Sacramento County on August 6, 2015. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtor asks for avoidance of the lien under 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of $159,549 as of the petition date. Dockets 7 & 8. The unavoidable liens totaled $128,192.07 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. Dockets 7 & 8. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule C. Dockets 7 & 8.

The motion will be denied because the debtor has not established entitlement to the $100,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 7.

4. 16-25749-A-7 ROBERT GARZA AND MARIA HERRERA — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 — 6-27-17 [45]
CARRINGTON MORTGAGE SERVICES, L.L.C. VS.

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

The movant, Carrington Mortgage Services, seeks relief from the automatic stay as to real property in Dixon, California.

Given the entry of the debtor's discharge on April 28, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $220,000 and it is encumbered by claims totaling approximately $130,928 (excluding unapproved attorney's fees and costs for this motion), consisting solely of the movant's claim. See Docket 50. Neither costs of sale, nor the debtors' exemption claim are encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). Id. The movant's deed is the only encumbrance against the property. This leaves approximately $89,072 of equity in the property.

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

Further, there is no evidence in the record establishing that the property is depreciating in value. See Docket 47. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of approximately $89,072. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee evaluates the property for administration. See Docket 52 (the trustee requesting time to determine administration options for the property). Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

5. 15-25950-A-7 MARY DUNCAN — MOTION TO AVOID JUDICIAL LIEN
PLG-2 — 7-14-17 [21]
VS. DISCOVER BANK

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $19,294.23 on February 1, 2012. The abstract of judgment was recorded with San Joaquin County on May 2, 2012. That lien attached to the debtor's interest in a residential real property in Stockton, California. The debtor asks for avoidance of the lien under 11 U.S.C. § 522(f)(1).

The motion will be denied because the court has no admissible evidence of value for the property. The debtor states in her declaration that the property had a value of $106,372 on the petition date, based on a "letter [she] received from Nationstar Mortgage." Docket 23 at 2. The debtor's reference to the letter as basis for the asserted value of the property makes the statement inadmissible hearsay. Fed. R. Evid. 801(c) & 802.

The motion will be denied also because the debtor amended her Schedule C on July 14, 2017, to add an exemption in the subject property, but she did not serve the Amended Schedule C on any of the creditors, informing them of the added exemption. Dockets 26 and 27. The debtor served the Amended Schedule C only on the trustee. Docket 27. Parties in interest, including creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

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| 6. | 16-25666-A-7<br>MIC-1 | THOMAS MALONEY AND ANN THOMAS | MOTION TO WITHDRAW AS ATTORNEY<br>6-26-17 [42] |

**Tentative Ruling:** The motion will be granted.

Attorney Doug Michie asks for permission to withdraw as counsel for the debtors because the debtors have stopped communicating with him.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"*(A) In General.*

*"(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

*"(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

*"(B) Mandatory Withdrawal.*

*"A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:*

*"(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

*"(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

*"(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

*"(C) Permissive Withdrawal.*

*"If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:*

*"(1) The client*
*(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or*
*(b) seeks to pursue an illegal course of conduct, or*
*(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or*
*(d) <u>by other conduct renders it unreasonably difficult for the member to carry out the employment effectively</u>, or*
*(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or*
*(f) breaches an agreement or obligation to the member as to expenses or fees.*

*"(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or*

*"(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or*

*"(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or*

*"(5) The client knowingly and freely assents to termination of the employment; or*

*"(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."*

This case was filed on August 26, 2016. The debtors received their discharge on December 12, 2016. The only reason the case is still open is that the trustee has filed a notice of assets and he is administering assets of the estate. There are no other pending proceedings or motions in which the movant is representing the debtors.

The movant has called the debtors and sent them email(s) and letter(s), but they have been non-responsive. Docket 44. The non-responsiveness of the debtors is cause for permitting the movant to withdraw as counsel for the debtors. Accordingly, the motion will be granted. The movant will be allowed to withdraw.

7. 17-22686-A-7 VIRGILO/SUZETTE MASIL — MOTION TO AVOID JUDICIAL LIEN
MKJ-2
VS. SPRINGLEAF FINANCIAL SERVICES, INC. — 6-29-17 [31]

**Tentative Ruling:** The motion will be denied.

A judgment was entered against debtor Suzette Masil in favor of Springleaf Financial Services, Inc. for the sum of $6,722.24 on June 6, 2016. The abstract of judgment was recorded with Sacramento County on April 26, 2017. That lien attached to the debtor's interest in a residential real property in Sacramento, California. The debtors are asking the court to avoid the lien under 11 U.S.C. § 522(f)(1).

The motion will be denied because the court has no evidence of a judicial lien by the respondent creditor against the debtors' real property. The lien referred to in the motion did not become a lien because the abstract of judgment was not recorded (*i.e.*, when the lien would have been created against the property) until after this bankruptcy case was filed. This case was filed on April 22, 2017 and the abstract of judgment was not recorded until April 26, 2017, in violation of the automatic stay. Docket 34 at 6; see 11 U.S.C. § 362(a)(1)-(3).

Actions taken in violation of the automatic stay are void (not voidable). Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants), Inc., 754 F.2d 811, 816 (9th Cir. 1985); O'Donnell v. Vencor Inc., 466 F.3d 1104, 1110 (9th Cir. 2006). There is then no lien for the court to avoid. Accordingly, this motion will be denied.

8. 17-22793-A-7 JAMES/CHRISTINE O'CONNORS — MOTION TO COMPEL ABANDONMENT
GEL-1 — 7-14-17 [14]

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Orangevale, California. The entire equity in the property is exempt.

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

The value of the property is $380,000. The property is encumbered only by a mortgage for $325,976 in favor of Central Loan Admin & Reporting. The debtors have exempted $54,024 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances, exemption claim, likely liquidation costs of approximately $30,400 (8% of value), and the trustee's filing of a report of no distribution, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

9. 17-21995-A-7 JASVINDER CHAHAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
RWR-1 — 5-22-17 [38]
BANK OF THE WEST VS.

**Tentative Ruling:** The motion will be denied.

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

The court continued the hearing on this motion from June 19 in order for the trustee to supplement the record with respect to the over $500,000 in tax liens against the property.

The property has a value of $200,000 and the movant's sole mortgage claim against the property totals only approximately $44,413. While the movant claims that the property is encumbered by claims totaling approximately $575,413, including approximately $531,000 of tax liens, the trustee has submitted evidence that those tax liens are being satisfied from the sale of other assets of the estate. Docket 135.

Moreover, the taxes underlying the liens are being reassessed as the debtor has

been filing outstanding tax returns with large tax losses (*e.g.*, $175,000 in 2010 return, $183,000 in 2011 return), which will substantially reduce or completely eliminate any taxes upon which the liens are based. Docket 135. Given this, the trustee will be seeking to sell the subject property for the benefit of unsecured creditors.

The movant has not met its burden of persuasion on establishing lack of equity in the property. The movant's claim secured by the property totals only $44,413, leaving approximately $155,587 of equity in the property. Given the equity in the property, relief from stay under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc., 54 F.3d 1200, 1202 (11th Cir. 1995).

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

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

10. 17-21995-A-7 JASVINDER CHAHAL — MOTION TO ABANDON
SCB-10 — 7-12-17 [125]

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

The motion will be granted.

The trustee wishes to abandon the estate's interest in a lease for real property in Stockton, California.

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

The lease payments are $5,000 a month and there are no estate assets on the property any longer. The estate has no ownership interest in the property. Given this, the court concludes that the lease is burdensome and of inconsequential value to the estate. The motion will be granted.

***FINAL RULINGS BEGIN HERE***

11. 17-20404-A-7 JOHNNIE MIMS — MOTION TO AVOID JUDICIAL LIEN
BB-1
VS. BARCLAY BANK DELAWARE — 5-16-17 [27]

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

The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the creditor. It was addressed to "Agent for Service of Process." Docket 31. This does not satisfy Rule 7004(h).

Finally, even if the debtor resets the motion for hearing, the motion would be denied because it admits that there is no judicial lien against the subject real property. The motion says that "no [r]ecorded [l]ien has been processed at this time." Docket 27 at 2. Only a default judgment has been entered against the debtor. Id. Hence, there is no lien to avoid.

12. 12-29513-A-7 NIKOLAY/LARISA GOLOVKO — MOTION TO AVOID JUDICIAL LIEN
MS-1
VS. COLLINS FINANCIAL SERVICES, INC. — 6-29-17 [40]

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

The motion will be granted.

A judgment was entered against debtor Larisa Golovko in favor of Collins Financial Services, Inc. for the sum of $21,264.18 on April 1, 2008. The abstract of judgment was recorded with Sacramento County on May 5, 2008. That lien attached to the debtor's interest in a residential real property in Antelope, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $186,000 as of the petition date. Dockets 42 & 43. The unavoidable liens totaled $198,020 on that same date, consisting of a single mortgage in favor of Citimortgage. Dockets 42 & 43. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1.00 in Amended Schedule C. Dockets 42, 43, 38, 45.

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

fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

13. 17-24218-A-7 RODNEY SMITH — ORDER TO SHOW CAUSE 7-11-17 [17]

**Final Ruling:** The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. However, the debtor paid the fee in full on July 17, 2017. No prejudice has resulted from the delay.

14. 17-23330-A-7 CHRIS/ASLEE JEFFERY — MOTION FOR RELIEF FROM AUTOMATIC STAY 6-28-17 [12]
RCO-1
WELLS FARGO BANK, N.A. VS.

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

The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Red Bluff, California. The property has a value of $120,000 and it is encumbered by claims totaling approximately $131,985. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on July 5, 2017.

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

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

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

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

15. 16-27435-A-7 GARY/TRACY EASLEY — MOTION TO AVOID JUDICIAL LIEN
NF-4 — 6-20-17 [65]
VS. TRI COUNTIES BANK

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

The motion will be granted.

A judgment was entered against debtor Gary Easley in favor of Tri Counties Bank for the sum of $24,278.16 on July 13, 2016. The abstract of judgment was recorded with Butte County on August 4, 2016. That lien attached to the debtor's residential real property in Magalia, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $240,000 as of the petition date. Dockets 67 & 68. The unavoidable liens totaled $210,000 on that same date, consisting of a single mortgage in favor of PNC Mortgage. Dockets 67 & 68. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $30,000 in Amended Schedule C. Docket 67, 68, 56, 57.

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

16. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
JB-2 — 6-29-17 [170]

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

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of $8,369 in fees and $198.83 in expenses, for a total of $8,567.83. This motion covers the period from September 19, 2014 through June 26, 2017. The court approved the movant's employment as the estate's accountant on September 26, 2014. Docket 45. In performing its services, the movant charged hourly rates of $345, 365, and 375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: analyzing tax implications of sales of estate assets, including real property; reviewing historical tax analyses; preparing estate returns for multiple tax years; and preparing and prosecuting compensation motion.

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

17. 16-24261-A-7 C.C. MYERS, INC.
DNL-13

MOTION TO APPROVE COMPENSATION OF ACCOUNTANT
6-27-17 [440]

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

The motion will be granted.

Bacheki, Crom & Co., accountant for the estate, has filed via the trustee its first and final application for approval of compensation. The requested compensation consists of $53,925.50 in fees and $263.98 in expenses, for a total of $54,189.48. This motion covers the period from July 5, 2016 through May 31, 2017. The court approved the movant's employment as the estate's accountant on July 29, 2016. In performing its services, the movant charged hourly rates of $275, $285, $360, $460, and $525.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) searching and identifying relevant financial records (such as tax and payroll);

(2) performing forensic analysis of the debtor's financial records (reviewing audited financial statements, tax returns, valuations, other accounting records);

(3) taking the time to understand the debtor's accounting software and attempting to gain access to the full software system;

(4) searching for documents initially undiscovered;

(5) reviewing payroll records, pre-petition sales records, tax returns, restructuring documents, joint venture agreements, joint venture financial statements;

(6) compiling information for a list of bank statement record requests;

(7) reviewing tax claims and proofs of claim;

(8) analyzing a $14 million shareholder loan bad debt loss;

(9) communicating with tax authorities about various matters, including assessments;

(10) reviewing payroll records and assessing payroll tax compliance;

(11) preparing estate tax returns and 505(b) determinations;

(12) performing tax consequence analyses;

(13) analyzing avoidable transfers;

(14) extensively communicating with the trustee, her counsel, and other estate professionals; and

(15) assisting in the preparation of employment and compensation motions.

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

18. 16-24261-A-7 C.C. MYERS, INC. — MOTION FOR ADMINISTRATIVE EXPENSES
DNL-14 — 7-3-17 [448]

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

The motion will be granted.

The trustee requests allowance of payments of post-petition estate income tax liability for the 2016 tax year as follows: $1,616 to the California Franchise Tax Board.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section

502(f) of this title, including–

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on June 30, 2016. The tax liability in question was incurred post-pet5ition in 2016. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

19. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
DNL-15 ALLOW ADMINISTRATIVE EXPENSE
7-3-17 [452]

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

The motion will be granted.

The trustee is seeking authority to pay to Viewpoint, Inc.:

– $11,056.34 for post-petition business and accounting records storage and maintenance services, and

– up to $3,000 for disputed (only as to amount) post-petition utility services at estate real property.

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

The subject services of Viewpoint were rendered after November 1, 2016, whereas this case was filed on June 30, 2016.

Viewpoint's services were actual and necessary in preserving the estate because the storage and maintenance of the documents, as well as the utility services, enabled the estate to identify and collect on receivables, enabled the estate to review and better assess proofs of claim, and enabled the estate to adjust claims held by the estate. Accordingly, the court will authorize payment of the requested fees to Viewpoint, as actual and necessary expenses for preserving the estate. The motion will be granted.

20. 17-22065-A-7 FELIX/GLORIA FLORES MOTION FOR
RCO-1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 6-29-17 [15]

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

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to real property in Rio Vista, California.

Given the entry of the debtor's discharge on July 11, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of $250,000 and it is encumbered by claims totaling approximately $331,630. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 1, 2017.

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

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

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

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

21. 16-25168-A-7 TERI TAYLOR
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-26-17 [98]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2006 Chrysler 300 vehicle. The movant has possession of the vehicle.

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

The petition here was filed as a chapter 13 proceeding on August 5, 2016. The case was converted to chapter 7 on May 23, 2017 and a chapter 7 meeting of creditors was first convened on June 27, 2017. Docket 82. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 22, 2017. The debtor has not filed a statement of intention.

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

Here, the debtor has not filed a statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 22, 2017, 30 days after the conversion to chapter 7.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on June 28, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 22, 2017.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

22. 17-22573-A-7 JANET CHANDLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1
BMW BANK OF NORTH AMERICA VS. — 7-3-17 [19]

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

The motion will be dismissed as moot.

The movant, BMW Bank of North America, seeks relief from the automatic stay with respect to a 2010 Mini Cooper vehicle.

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

The petition here was filed on April 18, 2017 and a meeting of creditors was first convened on May 26, 2017. Therefore, a statement of intention that refers to the movant's property and debt was due no later than May 18. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and

reaffirm the debt secured by the vehicle, the debtor did not do so timely. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 25, 2017, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on May 26, 2017, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 25, 2017.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

23. 17-22686-A-7 VIRGILO/SUZETTE MASIL — MOTION TO COMPEL ABANDONMENT 6-29-17 [26]
MKJ-1

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

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Sacramento, California (on Robbins Rd.). The entire equity in the property is exempt.

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

The debtors have scheduled the value of the property at $410,000. The property is encumbered only by a mortgage for $372,422 in favor of Caliber Home Loans. The debtors have exempted $37,578 in the property pursuant to Cal. Code Civ. Proc. § 704.730.

Given the property's value, encumbrances, exemption claim, and likely liquidation costs of approximately $32,800 (8% of value), the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

24. 17-23186-A-7 RAQUEL MACK — MOTION TO AVOID JUDICIAL LIEN
PSB-1
VS. STANISLAUS CREDIT CONTROL SVC., INC. — 5-23-17 [12]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

The court continued the hearing on this motion from July 21 in order for the debtor to supplement the record with evidence of her entitlement to her exemption claim against the subject real property. The debtor has provided such evidence to the satisfaction of the court. Dockets 21 & 22. An amended ruling from July 21 follows.

A judgment was entered against the debtor in favor of Stanislaus Credit Control Service, Inc. for the sum of $5,868.84 on August 5, 2015. The abstract of judgment was recorded with Sacramento County on September 17, 2015. That lien attached to the debtor's interest in a residential real property in Orangevale, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $377,000 as of the petition date. Dockets 16 & 1. The unavoidable liens totaled $219,501.28 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 16 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000 in Schedule C. Dockets 16 & 1.

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

25. 17-24095-A-7 IMELDA BARRAGAN — ORDER TO SHOW CAUSE
7-6-17 [12]

**Final Ruling:** The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of $335, as required by Fed. R. Bankr. P. 1006(a), and did not apply

to pay the fee in installments. However, the debtor paid the fee in full on July 11, 2017. No prejudice has resulted from the delay.