UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 17, 2019 at 10:00 a.m.

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.

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

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

1. 18-24721-A-7 NICOLE GRANT — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 11-7-18 [17]
SUNTRUST BANK VS.

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

The movant, Suntrust Bank, seeks relief from the automatic stay as to real property in Fair Oaks, California.

Given the entry of the debtor's discharge on November 7, 2018, 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 $373,541 and it is encumbered by claims totaling approximately $336,415. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is the only encumbrance against the property. This leaves approximately $37,125 of equity in the property.

Given this equity, relief from stay as to the estate 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 20. 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 $37,125. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee administers the estate and the case is closed or the property is abandoned prior to closure. See 11 U.S.C. § 362(c)(1) & (c)(2). At that point, the automatic stay will expire as a matter of law. 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.

2. 18-25249-A-7 ASBIR SINGH BARAICH AND JASVINDER KAUR BARAICH — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 12-3-18 [26]
AMERICAN HONDA FINANCE CORP. VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2014 Honda Accord vehicle.

As to debtor Asbir Baraich and his bankruptcy estate, 11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint

case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On October 3, 2017, Asbir Baraich filed a chapter 7 case (case no. 17-26583). But, the court dismissed that case on December 15, 2017 due to Asbir Baraich's failure to appear at the meeting of creditors. He filed the instant case with Jasvinder Baraich on August 21, 2018. The prior chapter 7 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot as to Asbir Baraich and his estate because the automatic stay in the instant case expired in its entirety as to the subject property with respect Asbir Baraich and his estate on September 20, 2018, 30 days after filing of the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety as to the subject property with respect to Asbir Baraich and his estate on September 20, 2018, 30 days after filing of the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

As to Jasvinder Baraich and her bankruptcy estate, the analysis is different. 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 August 21, 2018 and a meeting of creditors was first convened on September 19, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than September 19. Jasvinder Baraich 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 Jasvinder Baraich indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, she did not do so. And, no motion to redeem has been filed, nor has she requested an extension of the 30-day period. As a result, the automatic stay automatically terminated as to Jasvinder Baraich and her estate on October 19, 2018, 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.

Therefore, without this motion being filed, the automatic stay terminated on October 19, 2018 with respect to Jasvinder Baraich and her bankruptcy estate.

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.

3. 18-27269-A-7 DRUCILLA LOVETT — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-321 — 11-30-18 [19]
JACKSON SQUARE PROPERTIES L.L.C. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 movant, Jackson Square Properties, L.L.C., seeks relief from the automatic stay as to real property in Fairfield, California. The movant is the legal owner of the property. The debtor leased the property from the movant in July 2018. The lease will expire on July 31, 2019. The debtor stopped paying rent in October 2018. On October 9, 2018, the movant gave the debtor a three-day notice to pay or quit. On October 18, 2018, the movant filed an unlawful

detainer action in state court. On October 31, trial was set for November 20. The debtor filed this case on November 19, 2018.

The movant seeks relief from stay to proceed with the unlawful detainer action to obtain a judgment for possession of the property.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has defaulted under the lease agreement by failing to pay the monthly rent. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on her pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

If the movant prevails in the unlawful detainer action, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court. No other relief will be awarded.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

To the extent it applies, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

4.	18-20577-A-7	RUBEN CALDERON	OBJECTION TO CLAIM
	DMW-2		
	VS. JESSICA MARIE CALDERON		10-16-18 [26]

Tentative Ruling: The objection will be sustained in part.

The trustee objects to the priority claim of Jessica Calderon, POC 5-1 for $7,500, filed on May 29, 2018, asserted under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B), as a domestic support obligation.

The trustee seeks disallowance of the claim because of the lack of supporting documentation. The trustee further contends that even if the claim is not disallowed, the claim is not for domestic support obligation but rather for attorney's fees and costs. As such, the claim should be at the least reclassified as general unsecured.

Under 11 U.S.C. § 507(a)(1), priority classification is allowed for:

"*(1) First:*

"*(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition*

shall be applied and distributed in accordance with applicable nonbankruptcy law.

"*(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.*"

The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

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

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

The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. Holm at 623; In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. In re Knize, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The objecting party here has offered no evidence whatsoever with the objection, much less evidence of rebutting the presumptive validity of the claim. There is not even a declaration in support of the objection.

While there is no documentation with the proof of claim, the trustee says nothing about requesting and not receiving such documentation from the claimant. And, "*claim objections based solely on issues regarding the documentation provided, without any contest as to the debtor's liability or the amount of the debt, are not a sufficient basis for disallowing claims.*" The Bank of New York Mellon v. Lane (In re Lane), 589 B.R. 399, 406 n.5 (B.A.P. 9th Cir. 2018), as corrected (Sept. 26, 2018) (citing Heath v. American Express Travel Related Services Co. (In re Heath), 331 B.R. 424 (9th Cir. BAP 2005) (considering claim objections for lack of documentation in chapter 7 cases), and Campbell v. Verizon Wireless S-CA (In re Campbell), 336 B.R. 430 (9th Cir. BAP 2005) (same as to chapter 13 cases)).

Failure to comply with Fed. R. Bankr. P. 3001(c) is not a ground for disallowance of a claim under 11 U.S.C. § 502(b).

The court also notes that the proof of claim references a Placer County Superior Court proceeding, Case No. S-DR-0045505. POC 5-1 at 2.

On this record, the court is not willing to disallow the claim solely due to the lack of supporting documentation.

On the other hand, the claim is not for domestic support obligation and as such it is not entitled to the asserted priority status under section 506(a)(1)(A) and/or (B). The proof of claim indicates the debt is for attorney's fees and costs. This does not necessarily satisfy the 11 U.S.C. § 101(14A)(B) definition of domestic support obligation, that the debt be "in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit)." Facially, the debt is not for any of these. This court will not speculate as the possibility that the state court intended its award of the fees be in the nature of support. The claimant has not filed a response to this objection demonstrating that this was a support award.

The court also notes that this claim is different that the claimant's other claim for domestic support, POC 6-1, for $16,359. Accordingly, the objection will be sustained in part, reclassifying the claim to a general unsecured status.

5. 18-27279-A-7 RENATE STROHDACH — MOTION FOR RELIEF FROM AUTOMATIC STAY
MET-1 — 12-3-18 [12]
BANK OF THE WEST VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 movant, Bank of the West, seeks relief from the automatic stay with respect to a 2014 Forest River Flagstaff 31BHDS Fifth Wheel. The movant has produced evidence that the vehicle has a value of $20,050 ($18,900 in Schedule A/B) and its secured claim is approximately $35,814. Docket 15.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a non-opposition to the motion. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, dispose of it pursuant to

applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

6. 13-24380-A-7 JOSE ACOSTA
SLE-2
VS. CAPITAL ONE BANK (USA) N.A.

MOTION TO AVOID JUDICIAL LIEN
12-3-18 [24]

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

The motion will be granted.

A judgment was entered against the debtor in favor of Capital One Bank for the sum of $21,957.19 on November 7, 2011. The abstract of judgment was recorded with Sacramento County on March 30, 2012. That lien attached to the debtor's interest in a residential real property in Sacramento, 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 $141,501 as of the petition date. Docket 26 at 2, Acosta Decl. (stating a value of $141,501 and not the scheduled $141,601). The unavoidable liens totaled $256,867.20 on that same date, consisting of a single mortgage in favor of Beneficial. Dockets 26 at 2 & 27 Ex. B. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Docket 27 Ex. C.

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

7. 13-24380-A-7 JOSE ACOSTA
SLE-3
VS. LVNV FUNDING, L.L.C.

MOTION TO AVOID JUDICIAL LIEN
12-3-18 [29]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in

interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against the debtor in favor of LVNV Funding, L.L.C. for the sum of $5,486.57 on March 18, 2011. The abstract of judgment was recorded with Sacramento County on October 4, 2011. That lien attached to the debtor's interest in a residential real property in Sacramento, 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 $141,501 as of the petition date. Docket 31 at 2, Acosta Decl. (stating a value of $141,501 and not the scheduled $141,601). The unavoidable liens totaled $256,867.20 on that same date, consisting of a single mortgage in favor of Beneficial. Dockets 31 at 2 & 32 Ex. B. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) in the amount of $1.00 in Schedule C. Docket 32 Ex. C.

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

8. 11-22897-A-7 MICHAEL/COLEEN NOVO — MOTION TO AVOID JUDICIAL LIEN
RWH-3
VS. THE COMMERCIAL AGENCY — 9-24-18 [41]

Tentative Ruling: The motion will be granted.

The court continued the hearing on this motion from November 5, in order for the debtors to serve the creditors with the Amended Schedule C filed on August 16, 2018. The debtors served the creditors on November 5. Docket 48. An amended ruling follows below.

A judgment was entered against the debtors in favor of The Commercial Agency for the sum of $154,110.30 on September 9, 2010. The abstract of judgment was recorded with Nevada County on October 6, 2010. That lien attached to the debtor's interest in a residential real property in Penn Valley, California (Kingbird Court).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $209,000 as of the petition date. Docket 43. The unavoidable liens totaled $250,137 on that same date, consisting of a single mortgage in favor of Bank of America. Dockets 43 & 44. The debtors claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) in the amount of $1.00 in Amended Schedule C. Dockets 34, 43, 44.

The respondent holds a judicial lien created by the recordation of an abstract

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

FINAL RULINGS BEGIN HERE

9. 18-25407-A-7 JAZMINE HALL — MOTION FOR
RAS-1 — RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 11-9-18 [40]

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, U.S. Bank, N.A., seeks relief from the automatic stay as to real property in Vacaville, California. The property has a value of $382,400 and it is encumbered by claims totaling approximately $525,557. The movant's deed is in first priority position and secures a claim of approximately $263,232.

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 November 7, 2018 and filed a non-opposition to the motion.

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

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

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

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

recovering any fees and costs incurred in connection with the prosecution of the motion.

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

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

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

10. 18-23512-A-7 HENU YU — OBJECTION TO EXEMPTIONS
DNL-2 — 10-23-18 [37]

Final Ruling: This objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the 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 objection will be sustained.

The trustee objects to the debtor's $239,000 exemption of real property in Sacramento, California. The exemption has been claimed under Mass. Gen. Laws Chapter 188 Sections 1 and 2.

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 on October 23, 2018, within 30 days after the October 15, 2018 conclusion of the meeting of creditors.

Rights to exemptions of property are determined as of the date the bankruptcy petition is filed. Cisneros v. Kim (In re Kim), 257 B.R. 680, 685-87 (B.A.P. 9th Cir. 2000) (citing White v. Stump, 266 U.S. 310, 313 (1924)("*When the law speaks of property which is exempt and of rights to exemptions, it, of course, refers to some point of time. In our opinion this point of time is the one as of which the general estate passes out of the bankrupt's control, and with respect to which the status and rights of the bankrupt, the creditors, and the trustee in other particulars are fixed*"); D.A.N. Joint Venture III, L.P. v. Richey (In re Richey), Case No. 10-1306, 2011 WL 4485900 at *10 (B.A.P. 9th Cir., Aug. 8, 2011); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

Under 11 U.S.C. § 522(b)(3), "*Property listed in this paragraph is--(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.*"

Mass. Gen. Laws Chapter 188 Section 1 provides definitions for chapter 188 of the Massachusetts General Laws. It provides no exemptions.

Mass. Gen. Laws Chapter 188 Section 2 provides:

"*(a) The estate of homestead of each owner who is an elderly or disabled person, regardless of marital status, shall be protected under this section against attachment, seizure, execution on judgment, levy and sale for payment of debts and legacies, except as provided in subsection (b) of section 3, to the extent of the declared homestead exemption; provided, however, that the declaration of homestead for such elderly or disabled person that complies with section 5 has been recorded; and provided, further, that each owner occupies or intends to occupy the home as his principal residence.*

"*An owner of a home who qualifies under this section shall, upon recording of an elderly or disabled person's declaration of homestead protection, be eligible for protection of such ownership interest to the extent of the declared homestead exemption as set forth in clauses (3) and (4) of the definition of "declared homestead exemption" in section 1 regardless of whether such declaration is recorded individually or jointly with another.*

"*(b) Except as provided in the following paragraph, each elderly or disabled person's estate of homestead shall terminate upon: (i) the sale or transfer of that person's ownership interest in the home, except where the elderly or disabled person is also the transferee of all or a portion of the transferred interest; (ii) the recorded release of that person's homestead estate; (iii) the subsequent declaration of an estate of homestead on other property; (iv) the abandonment of the home as the principal residence by the person; (v) the death of the person; or (vi) with respect to a home owned in trust, the execution of a deed or recorded release by the trustees.*

"*In the event that an owner records a declaration under this section and then conveys to or is survived by a spouse who does not have the benefit of an estate of homestead created under this section or section 3 and the spouse occupies or intends to occupy the home as the principal residence, then the*

spouse shall be deemed, as of the time such spouse acquired title, to have the benefit of the declaration previously recorded to the same extent as if such declaration had been recorded under section 3, until the spouse becomes eligible for and records a declaration of homestead pursuant to this section.

"*(c) No declaration of homestead created under this section shall terminate the existing homestead rights of a non-titled spouse or any minor children.*

"*(d) Nothing in this section shall prohibit an elderly or disabled person from declaring or continuing a homestead pursuant to section 3, but no person shall concurrently hold rights under both this section and section 3.*"

Mass. Gen. Laws Ann. ch. 188, § 2.

Federal common law determines a person's domicile under 11 U.S.C. § 522(b)(3) (previously (b)(2)(A)). Donald v. Curry (In re Donald), 328 B.R. 192, 200, 202 (B.A.P. 9th Cir. 2005). Once domicile is established, it continues until superseded by another domicile. Id. at 202. Only one domicile may exist at any given time. Id. Domicile is the simultaneous physical presence in a place and an intention to remain there. Id. More broadly, domicile is one's permanent home, where one resides with the intention to remain or to which one intends to return and to which certain rights and duties are attached. Id. The difficulties with domicile typically arise over the requisite intent. The intent examined is a subjective one and it is a factual inquiry. Id. at 203; see also Gaudin v. Remis, 379 F.3d 631, 636-37 (9th Cir. 2004).

The objection argues that Massachusetts exemption law is not applicable because "[d]uring the 180-day period provided in 11 U.S.C. Section 522(b)(3)(A), the Debtor temporarily resided in Massachusetts but was domiciled in Maine."

The objection's supporting declaration states that the debtor resided temporarily, for work purposes only, in Massachusetts during 2016, but "[p]rior to and during that period," the debtor "also resided and was domiciled in Maine." In support of this, the declaration claims that the debtor provided her Maine address to her temporary employer in Massachusetts and through the present continues to hold a Maine driver license. Docket 39.

Additionally, as of the June 4, 2018 petition date, and through the present, the debtor has been residing in San Francisco or the Bay Area, in California. This is based on the debtor's own testimony at the meeting of creditors. Docket 39.

The foregoing indicates that the debtor was not domiciled in Massachusetts during the 730-day period pre-petition or during the 180-day period prior to that (first half of 2016).

The debtor's 2016 residence in Maine, temporary work in Massachusetts in 2016, listing an address in Maine for her employer in Massachusetts, holding a Maine driver license as of the petition date, and living in California just prior to and on the petition date, indicates to the court that the debtor's domicile during the relevant section 522(b)(3)(A) periods was not in Massachusetts. These facts indicate that the debtor did not intend to remain or return to Massachusetts, regardless of where she was residing. The debtor was staying in Massachusetts only temporarily, with intention of returning to Maine. She listed a Maine address with her Massachusetts employer. The intent to return to Maine is evident from the fact that the debtor holds a Maine driver's license.

In any event, although the evidence may not be conclusive as to where was the debtor's domicile during the relevant section 522(b)(3)(A) periods, it is conclusive that it was not in Massachusetts. Without a Massachusetts domicile, the debtor is not entitled to claim an exemption under Massachusetts law.

At a minimum, the trustee's evidence shifts the burden of production on the issue of domicile to the debtor.

Fed. R. Bankr. P. 4003(c) provides that:

"*In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.*" See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

"*Therefore, Fed. R. Bankr.P. 4003(c) places the burden to prove that an exemption is not properly claimed on the objecting party. Nevertheless, '[i]f the objecting party can produce evidence to rebut the exemption, the burden of production then shifts to the debtor to come forward with unequivocal evidence to demonstrate that the exemption is proper ... the burden of persuasion, however, always remains with the objecting party.'*"

In re Plant, 503 B.R. 224, 229 (Bankr. D. Mass. 2013) (addressing evidentiary burdens as to exemptions claimed under Massachusetts law and citing Carter at 1029 n.3).

While it is actually state law that governs the burden of proof (ultimate burden) to establish the exemption claim, despite Rule 4003(c), the burden of production here has shifted to the debtor regardless of who has the burden of persuasion. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

The trustee's evidence (the debtor's 2016 residence in Maine, temporary work in Massachusetts in 2016, listing an address in Maine for her employer in Massachusetts, holding a Maine driver license as of the petition date, and living in California just prior to and on the petition date), satisfies the initial evidentiary burden of showing the invalidity of the exemption. This shifted the burden to the debtor to show that the exemption is proper.

The debtor has not come forth with any evidence (or response whatsoever) to counter the trustee's evidence. The debtor has filed no response to the objection.

Accordingly, the objection will be sustained and the court will disallow the exemption claim.

11. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its second and final motion for approval of compensation.

The requested second interim compensation consists of $147,510.50 in fees and $4,543.23 in expenses, for a total of $152,053.73. This motion covers the period from August 1, 2015 through the present (except for work involving the adversary proceeding against Sutter Central Valley Hospitals). The court approved the movant's employment as the trustee's general counsel (as the Suntag Law Firm) on April 9, 2013. The movant's employment as HCS was approved on August 25, 2014. See also Docket 73, Order Authorizing Initial Employment of HCS. In performing its services, the movant charged hourly rates of $90, $175, $200, $275, $345, and $375.

The first interim compensation consisted of $102,094.50 in fees and $4,827.96 in expenses, for a total of $106,922.46. It covered the period from March 15, 2013 through July 31, 2015. This compensation was approved by the court on September 29, 2015. Docket 200.

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) continuing collection on the estate's money judgment against Appollo Equity,

(2) prosecuting a request for recovery of attorney's fees from Appollo,

(3) investigating Appollo's assets, recording abstracts of the judgment, and prosecuting a request for a judgment debtor examination,

(4) preparing and prosecuting requests for an order to show cause as to why Appollo was not appearing at the debtor examinations,

(5) negotiating settlement with Appollo,

(6) continuing prosecution of the claims against the non-Sutter defendants in the Sutter adversary proceeding,

(7) negotiating settlements with the non-Sutter defendants,

(8) preparing and prosecuting multiple motions for approval of the settlements with the non-Sutter defendants,

(9) searching for special counsel to continue the prosecution of the claims against Sutter,

(10) bringing special counsel current on the details of the Sutter litigation,

(11) assisting special counsel in the mediations and settlement negotiations with Suter,

(12) preparing and prosecuting a motion for approval of the settlement with Sutter and compensation of special counsel,

(13) investigating a potential claim against the City of Tracy with respect to reimbursements for pre-petition development fees paid by the debtor,

(14) assisting the trustee with analysis and investigation of proofs of claim,

(15) obtaining and reviewing supporting documentation for claims,

(16) negotiating withdrawal or reduction of several claims,

(17) assisting the trustee with the general administration of the estate, and

(18) preparing and filing employment and compensation motions.

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

12. 09-44733-A-7 ROBERT WIEMER
HCS-4

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
11-19-18 [267]

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.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $14,000 in fees (reduced from $25,733.50) and $1,065.05 in expenses, for a total of $15,065.05. This motion covers the period from February 23, 2015 through the present. The court approved the movant's employment as the

trustee's attorney on March 25, 2015. In performing its services, the movant charged hourly rates of $90, $175, $200, $225, $275, $325, $345, 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:

(1) assisting the trustee with the evaluation of undisclosed or newly disclosed assets, including two lawsuits, firearms, lot of land in New Mexico, real property in Fair Oaks, California, a safe with unknown contents, and interests in two partnerships and a limited liability company,

(2) preparing for and appearing at a meeting of creditors to question the debtor,

(3) reviewing and responding to a motion for abandonment of one of the lawsuits by the debtor,

(4) reviewing and analyzing another motion for abandonment of the same lawsuit by the debtor,

(5) negotiating a sale of the lawsuit,

(6) investigating the partnership and real property interests,

(7) evaluating ongoing environmental remediation issues involving the Fair Oaks real property,

(8) negotiating a package sale of the partnership and Fair Oaks real property interests,

(9) preparing and prosecuting a motion for sale,

(10) analyzing two offers for the purchase of the firearms, the lot of land, the limited liability company interest, and the safe with contents (and some assets already sold),

(11) negotiating a sale to one offeror and preparing and prosecuting a motion for sale,

(12) attempting to salvage the sale, after denial of the motion,

(13) assisting the trustee with the general administration of the estate, and

(14) preparing and filing employment and compensation motions.

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

13. 09-29749-A-7 JOSE BURGOS
JALB-2
VS. UNIFUND CCR PARTNERS

MOTION TO
AVOID JUDICIAL LIEN
9-7-18 [29]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "*[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.*"

The debtor served the motion on Unifund CCR Partners without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." See Dockets 38 & 42. The motion will be dismissed.

14. 16-25666-A-7 THOMAS MALONEY AND ANN THOMAS
DMW-6

MOTION TO
APPROVE COMPENSATION OF CHAPTER 7 TRUSTEE
10-11-18 [82]

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

The motion will be granted.

The chapter 7 trustee, Douglas Whatley, has filed first and final motion for approval of compensation. The requested compensation consists of $13,000 (reduced) in fees and $504.61 in expenses, for a total of $13,504.61. The services for the sought compensation were provided from August 26, 2016 through the present. The sought compensation represents 34.7 hours of services.

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

The movant will make or has made $435,704.88 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $25,035.24 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $19,285.24 (5% of the next $385,704.88 ($286,395.01)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $13,000 do not exceed the cap of section 326(a).

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

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should

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

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

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

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interests in real property and vehicles, equipment, and other personal property,

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

(5) communicating with the estate's professionals about various issues, including the valuation and sale of estate assets,

(6) reviewing claims,

(7) negotiating a sale of the real property,

(8) resolving delays associated with the sale of the real property,

(9) reviewing various pleadings and documents,

(10) addressing tax and accounting issues,

(11) preparing final report, and

(12) preparing compensation motion.

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

15. 18-23070-A-7 WILLIAM/LORINDA HANSEN — MOTION TO COMPEL ABANDONMENT 11-19-18 [63]
JFL-1

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Docket 64. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. See Docket 66. It specifies that written opposition must be filed and served at least 14

days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(B). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

16. 14-21683-A-7 ROBERT/LYNNE DIMODICA — MOTION TO AVOID JUDICIAL LIEN
ALF-2
VS. PORTFOLIO RECOVERY ASSOC., L.L.C. — 11-13-18 [23]

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 Lynne Dimodica in favor of Portfolio Recovery Associates, L.L.C. for the sum of $10,458.17 on October 29, 2013. The abstract of judgment was recorded with Solano County on November 19, 2013. That lien attached to the debtor's interest in a residential real property in Vacaville, 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 $140,000 as of the petition date. Docket 25. The unavoidable liens totaled $247,634 on that same date, consisting of a mortgage in favor of Ocwen Loan Servicing for $197,146 and a mortgage in favor of Ocwen Loan Servicing for $50,488. Dockets 25 & 26 Ex. C. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Docket 26 Ex. B.

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).

17. 14-21683-A-7 ROBERT/LYNNE DIMODICA — MOTION TO AVOID JUDICIAL LIEN
ALF-3
VS. TD BANK USA, N.A. — 11-13-18 [29]

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 Robert Dimodica in favor of TD Bank U.S.A. for the sum of $8,215.18 on December 19, 2011. The abstract of judgment was recorded with Solano County on January 6, 2012. That lien attached to the debtor's interest in a residential real property in Vacaville, 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 $140,000 as of the petition date. Docket 31. The unavoidable liens totaled $247,634 on that same date, consisting of a mortgage in favor of Ocwen Loan Servicing for $197,146 and a mortgage in favor of Ocwen Loan Servicing for $50,488. Dockets 31 & 32 Ex. C. The debtor claimed an exemption pursuant to Cal. Civ. Pro. Code § 703.140(b)(5) in the amount of $1.00 in Schedule C. Docket 32 Ex. B.

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).

18. 18-26491-A-7 SKY BLUE TRANS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
OT-1 — 11-20-18 [6]
MARIA CERVANTES VS.

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.

The court also notes that the debtor was not served properly with the motion. The debtor's address in the proof of service for the motion is missing a zip code.

19. 18-23895-A-7 KATHLEEN BEVIER — MOTION TO AVOID JUDICIAL LIEN
MOH-2 — 11-20-18 [33]
VS. CAPITAL ONE BANK (USA), N.A.

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Docket 38. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 34. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local

Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing. Accordingly, the motion will be dismissed.