

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 18, 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: 2, 3, 4, 7, 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.

December 18, 2017 at 10:00 a.m.

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 JANUARY 16, 2018 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 2, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 9, 2018. 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. 17-26630-A-7 THOMAS/KRISTYNE NORDEN MOTION TO  
DBJ-1 COMPEL ABANDONMENT  
11-9-17 [15]

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

The debtors request an order compelling the trustee to abandon the estate's interest in their sole proprietorship excavation business, Western General Engineering.

The trustee has filed a limited opposition to the abandonment of the business' receivables.

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 motion will be denied as unnecessary because it states that "[t]he business has no assets." Docket 15. If a business has absolutely no assets, there is nothing to abandon and there is no case or controversy for the abandonment of the business.

2. 13-31633-A-7 CHARLES COATS MOTION TO  
GEL-5 AVOID JUDICIAL LIEN  
VS. CITIBANK, N.A. 12-4-17 [52]

**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 Citibank for the sum of \$6,729.01 on July 25, 2011. The abstract of judgment was recorded with Sutter County on September 27, 2011. That lien attached to the debtor's interest in a residential real property in Sutter, 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 \$135,000 as of the petition date. Dockets 1 & 54. The unavoidable liens totaled \$137,018 on that same date, consisting of a single mortgage in favor of ABN AMRO/Citimortgage. Dockets 1 & 54. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. Dockets 21 & 54.

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).

3. 13-31633-A-7 CHARLES COATS MOTION TO  
GEL-6 AVOID JUDICIAL LIEN  
VS. CITIBANK, N.A. 12-4-17 [58]

**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 Citibank for the sum of \$3,618.92 on July 20, 2011. The abstract of judgment was recorded with Sutter County on September 27, 2011. That lien attached to the debtor's interest in a residential real property in Sutter, 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 \$135,000 as of the petition date. Dockets 1 & 60. The unavoidable liens totaled \$137,018 on that same date, consisting of a single mortgage in favor of ABN AMRO/Citimortgage. Dockets 1 & 60. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. Dockets 21 & 60.

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).

4. 13-31633-A-7 CHARLES COATS MOTION TO  
GEL-7 AVOID JUDICIAL LIEN  
VS. SYNCHRONY BANK 12-4-17 [64]

**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 Citibank for the sum of \$8,369.49 on August 16, 2011. The abstract of judgment was recorded with Sutter County on October 18, 2011. That lien attached to the debtor's interest in a residential real property in Sutter, 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 \$135,000 as of the petition date. Dockets 1 & 66. The unavoidable liens totaled \$137,018 on that same date, consisting of a single mortgage in favor of ABN AMRO/Citimortgage. Dockets 1 & 66. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. Dockets 21 & 66.

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).

5.	10-27435-A-7      THOMAS GASSNER FWP-1	MOTION FOR SUBSTITUTION AS REPRESENTATIVE FOR DEBTOR 11-7-17 [123]
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**Tentative Ruling:**      The motion will be denied without prejudice.

Georgene Gassner, the debtor's surviving spouse, moves to substitute the debtor in this case, who passed away on October 5, 2017, with Ms. Gassner as the debtor's representative.

This case was filed on March 25, 2010. Docket 1. The trustee issued a report of no distribution on June 2, 2010. The debtor received his chapter 7 discharge on July 12, 2010. Docket 31. The case was closed on May 11, 2011. Docket 57. The debtor moved to reopen the case on February 1, 2017, to schedule a previously omitted asset – interest in an irrevocable family trust. Docket 59. The court reopened the case on February 2, 2017. Docket 60. The court granted an order reappointing a trustee in the case on February 7, 2017. Docket 65. The debtor passed away on October 5, 2017.

Local Bankruptcy Rule 1016-1(a) prescribes that:

*"Notice of Death. In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.*

*"The Notice of Death may be combined with the single motion permitted by paragraph (b) of this Rule. If so combined, the title to the motion and notice of motion shall be: 'NOTICE OF DEATH AND MOTION FOR [state relief requested].' The death certificate (redacted as appropriate) shall be filed as an exhibit to such motion."*

Under Fed. R. Civ. P. 25, made applicable by Fed. R. Bankr. P. 7025:

**"(a) Death.**

**"(1) Substitution if the Claim Is Not Extinguished.** *If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.*

**"(2) Continuation Among the Remaining Parties.** *After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.*

**"(3) Service.** *A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.*

**"(b) Incompetency.** *If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).*

**"(c) Transfer of Interest.** *If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).*

**"(d) Public Officers; Death or Separation from Office.** *An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution."*

The notice of death here was timely, filed on November 7, 2017, 33 days after the October 5 passing of the debtor. The subject motion was also filed on November 7.

The movant's request for "substitution as representative for debtor" will be denied.

It makes no sense for the movant to be substituted in this case in representative capacity for a deceased debtor. The court does not see how a party who has passed away can have a legal representative. For instance, personal representatives are representatives not of the deceased, but of the estate of the deceased.

Additionally, there is no evidence with the motion that the movant was ever appointed as a representative of the debtor in state court, such as in a probate proceeding. Nor is there evidence with the motion that the movant is about to be appointed as such a representative of the debtor. See Docket 125. The movant is not asking this court to appoint her as a representative of the

debtor either. She is asking merely to be *substituted* in the case as a representative.

Further, the only authority for a representative to be substituted into a case is in the context of incompetence. See Fed. R. Civ. P. 25(b). The court has been given no such authority in the context of death.

The substitution authority under Rule 25 is limited only to substitutions of real parties in interest, *i.e.*, successors in interest. Rule 25(a)(1) allows substitutions only of "the proper party," or in other words, real parties in interest.

The court then will not permit the movant to be substituted in the case as a representative of the debtor.

Finally, while the movant's declaration states that she is a successor in interest to the debtor, with respect to the previously undisclosed asset which will be now administered, the evidence to support this is inadequate. Docket 125 at 1.

The only evidence to support this point is a statement from the movant that she is the surviving trustor of the family trust. Docket 125 at 1.

However, without the court knowing the terms of the trust, this statement is meaningless. The court cannot determine the relevance of the movant being a surviving trustor, to her being the debtor's successor in interest, without knowing what the trust provides for the debtor's passing.

The motion will be denied.

6. 17-26140-A-7 LEWIS/LISA CLINTON MOTION TO  
DISMISS CASE AS TO LISA MARY  
CLINTON ONLY  
11-13-17 [15]

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

One of the joint debtors, Lisa Mary Clinton, has filed a request that the court "remove" her name from this case, leaving her spouse, Lewis Green Clinton, Jr., as the only debtor. This motion is made because Ms. Clinton has discovered that all of her significant assets are in her husband's name only. The court interprets this request to be a motion to dismiss the case as to Lisa Mary Clinton only.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." Dismissal should be denied if it would prejudice the debtor's creditors. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9<sup>th</sup> Cir. 2004).

The motion will be denied. The debtor has not established cause. First, the motion is unsupported by any evidence, such as an affidavit or declaration establishing the factual assertions in the motion.

Second, even if there were probative and admissible evidence with the motion, the fact that the family's assets may be only in Mr. Clinton's name and Ms. Clinton may not be a named owner of such assets is irrelevant.

*"Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property."* Cal. Fam. Code § 760.

Property acquired during marriage is community property, regardless of the form of title by which the property is taken. "The characterization of property as community or separate is not dependent on the form in which title is taken." Kircher v. Kircher, 189 Cal. App. 4th 1105, 1114 (2010)

Moreover, community property is liable for the debts of both spouses incurred during the course of the marriage. See Cal. Fam. Code § 910. The result is no different in bankruptcy. Even when only one spouse is a debtor, the community property interests of both spouses become property of the estate. See 11 U.S.C. § 541(a)(2). The trustee will use the proceeds from the liquidation of that community property to pay the claims of community creditors. See 11 U.S.C. §§ 726(c) & 1129(a)(7)(A)(ii).

Hence, whether or not the assets and/or liabilities are only in Mr. Clinton's name is irrelevant to the administration and liquidation of those assets and liabilities in the bankruptcy case.

And, Ms. Clinton has offered no other reason for why her dismissal from the bankruptcy case would be warranted.

7. 17-27663-A-7 JOSE ROID  
VVF-1  
HONDA LEASE TRUST VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
12-1-17 [13]

**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, Honda Lease Trust, seeks relief from the automatic stay with respect to a 2016 Acura TLX. The vehicle has a value of \$19,475 and its secured claim is approximately \$25,617.

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 statement of nonopposition on December 4, 2017. Further, the debtor has not made four pre-petition payments to the movant, and the movement gained possession of the vehicle prior the petition date. In the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and

(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.

8. 17-20068-A-7 ROYLENE BROWN MOTION FOR  
EMM-2 RELIEF FROM AUTOMATIC STAY  
THE BANK OF NEW YORK MELLON VS. 11-13-17 [39]

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

The movant, Bank of New York Mellon, seeks relief from the automatic stay with respect to real property located in Sutter Creek, California. The property has a value of \$333,000 and it is encumbered by claims totaling approximately \$706,426. The movant's deed is in first priority position and secures a claim of approximately \$535,786.

The subject property consists of two lots, one containing the debtor's residence and one that is empty. See Docket 20. Each lot has a distinct assessor parcel number for tax purposes.

The movant previously filed a motion for relief from stay as to the subject property which the court granted on February 21, 2017. Docket 34. In the motion, the subject property is identified by a single assessor parcel number 015-310-026-000. Docket 16 at 7 & 19; Docket 17. The debtor opposed the motion to the extent it referred to assessor parcel number 015-310-027-000, the number assigned to the empty lot next to the debtor's residence. Docket 20. The court's original order granting the motion for relief entered on February 21 did not reference an assessor parcel number; however, it's corresponding ruling on the motion granted relief only as to assessor parcel number 015-310-026-000. See Dockets 30 & 34. The court has since amended its February 21 order to reference assessor parcel number 015-310-026-000 to clarify the relief previously granted. Docket 52.

The movant now contends that its deed of trust encumbers both lots (identified by assessor parcel numbers 015-310-026-000 and 015-310-027-000). While the deed of trust refers only to assessor parcel number 015-310-026-000, the legal description refers to both parcels:

*All that certain real property situated in the County of Amador, State of California, described as follows:*

*Parcel One:*

*Parcel 21-C-1 and 21-C-2, as shown upon that certain record of survey entitled, "Viola Springall", and filed for record on March 26, 1971, in Book 17 of Maps and Plats, at Page 64, Amador County Records.*

Docket 42, Ex. 2, at 19.

The debtor disputes that the movant's security interest encumbers the empty lot because its assessor parcel number is not included in the legal description found in the deed of trust. See Docket 54 at 2.

Under California tax law, an assessor parcel number is used only for administrative and procedural purposes "and will not be proof of title and in the even of any conflicts the stated legal description noted upon the document shall govern." Rev. & Tax. Code, § 11911.1. It also provides that an error or omission in such parcel number shall not invalidate the instrument or result in liability on the part of the person who caused the error or omission. Id.

The court finds no basis for concluding that the movant's deed of trust does not encumber the empty lot identified by assessor parcel number 015-310-027-000. First, the omission of an assessor parcel number in the legal description of a deed of trust is not dispositive under California law. Second, the legal description in the movant's deed of trust refers to a bifurcated parcel consistent with the characterization of the subject property as two lots.

Given the entry of debtor's discharge on April 24, 2017, the automatic stay has expired as to debtor and any interest debtor may have in the property. See 11 U.S.C. § 362(c). Thus, the motion is dismissed as to debtor.

To the extent the debtor disputes the movant's interest in the property, the debtor may pursue remedy in state court upon abandonment of the property to the debtor by motion or operation of law.

As to the trustee, the motion will be dismissed as moot in part and granted in part pursuant to 11 U.S.C. § 362(d)(2) to permit movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded. The motion is granted as to assessor parcel number 015-310-027-000. 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 has filed no response to this motion and, moreover, he filed a report of no distribution on January 21, 2013.

The motion is dismissed as moot as to the property identified by assessor parcel number 015-310-026-000 given the court's prior order granting relief from stay as to this property. See Dockets 34 & 52.

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.

9. 17-20068-A-7 ROYLENE BROWN MOTION TO  
WW-1 AMEND  
12-1-17 [47]

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

The debtor requests that the court amend its order for relief from stay granted on February 21, 2017 (docket 34) to include reference to assessor parcel number 015-310-026-000. However, on the same day this motion was filed, the bank asked the court to amend the order on its motion for relief from the automatic stay. The court entered an order amending its February 21 order. See Docket 52. The motion is therefore moot.

Insofar as the debtor requests attorney's fees for making this motion, the motion will be denied. The court is unconvinced that the motion was necessary inasmuch as the bank promptly moved to amend its order when the problem came to light.

10. 17-22988-A-7 BRIAN ANDERSON AMENDED MOTION TO  
S.B.-5 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
12-1-17 [65]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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.

Schneweis-Coe & Bakken, LLP, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$8,790.00 in fees and \$152.66 in expenses, for a total of \$8,942.66. This motion covers the period from July 10, 2017 through December 18, 2017. The court approved the movant's employment as the trustee's attorney on July 14, 2017. In performing its services, the movant charged hourly rates of \$150 and \$300.

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 estate with the sale of real property; and (2) and general case administration including 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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

11. 17-26295-A-7 RICHARD/LINDA WALTHER MOTION TO  
SKS-1 DISMISS CASE  
11-10-17 [14]

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

The U.S. Trustee moves for dismissal of the case because no appearance has been made for the debtors at the continued meeting of creditors held on November 8, 2017. The debtors also made no appearance at the meeting of creditors held on October 25, 2017.

In the alternative, the trustee requests that the case deadline to object to debtors' discharge under section 727 and to file motions for abuse under section 707 be extended to 60 days after the date of the continued meeting of creditors which is on December 20, 2017 at 2:30 p.m.

The debtors oppose the motion. The opposition states that the debtors failed to appear at the October 25 and November 8 meetings due to illness. The debtors request that the motion be conditionally denied pending their appearance at the December 20 meeting. Further, joint debtor, Linda Walther, requests a telephonic appearance at the December 20 meeting due to her illness.

The court will deny the motion to dismiss on the condition that the debtors appear at the continued meeting of creditors scheduled on December 20, 2017 at 2:30 p.m. The deadline to object to debtors' discharge under section 727 and to file motions for abuse under section 707 will be extended to 60 days after December 20, 2017. The request to appear telephonically at the meeting must be made to the trustee/U.S. Trustee.

**FINAL RULINGS BEGIN HERE**

12. 17-23908-A-7 MARK/CHRISTINA DANENHOWER MOTION TO  
HSM-2 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
11-20-17 [37]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$6,704.00 in fees and \$8.00 in expenses, for a total of \$6,712. This motion covers the period from June 12, 2017 through December 4, 2017. The court approved the movant's employment as the trustee's attorney on June 30, 2017. In performing its services, the movant charged hourly rates of \$320 and \$400.

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) reviewing petition documents regarding pursuing estate assets, (2) reviewing business transactions related to the debtors' wholly owned solar company, (3) analyzing potential avoidance claims, (4) assisting the trustee with the general administration of the estate, and (5) 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. 12-34611-A-7 DANIEL/CAROL DUARTE MOTION TO  
MTM-2 AVOID JUDICIAL LIEN  
VS. CITIBANK (SOUTH DAKOTA), N.A. 11-30-17 [25]

**Final Ruling:** The motion will be dismissed without prejudice.

The movant has provided only 18 days' notice of the hearing on this motion. Docket 29. 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 26. 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 motion will be dismissed also because it was not served on the respondent creditor, Citibank, 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 "Legal Services." Docket 29.

Also, service was not effectuated by certified mail. Docket 29.

And, while the debtor served Citibank's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Even if the court were to disregard to above deficiencies, the motion would be denied because the debtors amended their Schedule C on November 29, 2017, to add an exemption in the subject property, but they did not serve the Amended Schedule C on all the creditors and the trustee, informing them of the added exemption. Dockets 22, 24, 3. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The debtors have not afforded parties in interest such an opportunity.

Finally, the motion is devoid of admissible evidence as the only declaration in support of the motion has not been executed under the penalty of perjury. Docket 27.

14.	12-34611-A-7	DANIEL/CAROL DUARTE	MOTION TO
	MTM-3		AVOID JUDICIAL LIEN
	VS. CAPITAL ONE BANK (USA), N.A.		11-30-17 [30]

**Final Ruling:** The motion will be dismissed without prejudice.

The movant has provided only 18 days' notice of the hearing on this motion. Docket 34. 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 31. 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 motion will be dismissed also because it was not served on the respondent creditor, Citibank, 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 service was not effectuated by certified mail. Docket 34.

And, while the debtor served Capital One's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Even if the court were to disregard to above deficiencies, the motion would be denied because the debtors amended their Schedule C on November 29, 2017, to add an exemption in the subject property, but they did not serve the Amended Schedule C on all the creditors and the trustee, informing them of the added exemption. Dockets 22, 24, 3. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). The debtors have not afforded parties in interest such an opportunity.

Finally, the motion is devoid of admissible evidence as the only declaration in support of the motion has not been executed under the penalty of perjury. Docket 32.

15. 16-22654-A-7 MARC LIM  
GMR-2

MOTION TO  
APPROVE COMPENSATION OF ACCOUNTANT  
11-15-17 [213]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$6,280.50 in fees and \$157.45 in expenses, for a total of \$6,437.95. This motion covers the period from May 19, 2016 through November 14, 2017. The court approved the movant's employment as the estate's accountant on May 24, 2016. In performing its services, the movant charged hourly rates of \$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: preparing estate tax returns; providing tax advice to the trustee; and preparing analysis and questions to be asked of the debtor, pertaining to various business transactions.

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

16. 17-25461-A-7 CINDY CUNNINGHAM  
HSM-2

MOTION TO  
EXTEND DEADLINE TO FILE A  
COMPLAINT OBJECTING TO DISCHARGE  
OF THE DEBTOR  
11-20-17 [19]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 a 60-day extension, from November 20, 2017 to January 19, 2018, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge objection complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was March 20, 2017. This motion was filed on March 14, 2017. Thus, the motion complies with the temporal requirements of the rule.

The first meeting of creditors was concluded on November 14, 2017. Among other issues, the trustee anticipates further investigation of issues in connection with the debtor's long-running dissolution action pending in the Sacramento county superior court.

As a result, the trustee needs additional time to investigate the debtor's financial affairs.

Given the foregoing, cause exists for the requested extension of time. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to January 19, 2018.

17. 17-25763-A-7 ALBERT VILLELA  
DS-4  
DIANE SUN VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
11-20-17 [48]

**Final Ruling:** The motion will be dismissed as unnecessary because the case was dismissed on July 30, 2017. The automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(2)(B). Retroactive or relief under 11 U.S.C. § 362(d)(4) has not been requested.

18. 17-26864-A-7 DEBORAH STOCKSEN  
MDE-1  
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
11-16-17 [12]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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, Toyota Motor Credit Corp., seeks relief from the automatic stay with respect to a 2016 Toyota RAV4. The vehicle has a value of \$24,875 and its secured claim is approximately \$41,322.

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 statement of nonopposition on November 20, 2017. Further, the debtor has not made three pre-petition and one post-petition payments to the movant. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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.

19. 17-27380-A-7 DANIELLE ESPINOZA ORDER TO  
SHOW CAUSE  
11-21-17 [12]

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

The debtor failed to pay the filing fee for filing her chapter 7 petition. The fee in the amount \$335 was due on November 7, 2017. However, the debtor paid the fee in full on November 27, 2017. No prejudice has resulted from the delay.

20. 17-25481-A-7 JOHN ROSE MOTION FOR  
APN-1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO AUTO FINANCE VS. 11-8-17 [31]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 in part.

The movant, Wells Fargo Auto Finance, seeks relief from the automatic stay with respect to a 2007 Cadillac Escalade. The vehicle has a value of \$13,697 and its secured claim is approximately \$13,612.

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

As to the trustee, the court concludes that there is de minimus 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. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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.

21.	17-24195-A-7	GOHAR ASLANYAN	ORDER TO SHOW CAUSE 11-20-17 [64]
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**Final Ruling:** The order to show cause will be discharged.

The debtor failed to pay the filing fee for filing a motion to compel abandonment. The fee in the amount \$181 was due on November 6, 2017. However, the debtor paid the fee on November 22, 2017. No prejudice has resulted from the delay.