UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 8, 2014 at 10:00 a.m.

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

3, 4, 5, 6

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

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

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

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

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

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

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 6, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 22, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 29, 2014. 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. 14-26607-A-7 JUAN FIGUEROA — ORDER TO SHOW CAUSE 8-21-14 [23]

Tentative Ruling: The motion for relief from the automatic stay (DCN KEH-1) will be dismissed.

The movant, Balboa Thrift & Loan, filed a motion for relief from the automatic stay on August 7, 2014 (DCN KEH-1), but it did not pay the filing fee for the motion, in the amount of $176. Dockets 15 & 21. The fee has not been paid. This is cause for dismissal of the motion.

2. 14-26607-A-7 JUAN FIGUEROA — MOTION FOR RELIEF FROM AUTOMATIC STAY 8-7-14 [15]
KEH-1
BALBOA THRIFT & LOAN VS.

Tentative Ruling: The motion will be dismissed without prejudice given that the movant has not paid the filing fee for the motion, in the amount of $176.

3. 11-26526-A-7 CARRIE SALING — MOTION TO AVOID JUDICIAL LIEN 8-14-14 [23]
SJS-2
VS. DISCOVER BANK

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 respondents were not required to file a written response or opposition to the motion. If any respondent appears 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 in part.

A judgment was entered against the debtor in favor of Discover Bank for the sum of $22,224.71 on May 21, 2010. The abstract of judgment was recorded with Sacramento County on September 24, 2010. That lien attached to the debtor's residential real property in Elk Grove, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $209,000 as of the date of the petition. The unavoidable liens total $187,730 on that same date, consisting of a single mortgage in favor of Wells Fargo Home Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $20,710 in Schedule 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 at least $560 of equity to support the judicial lien. After accounting for the $187,730 mortgage and the $20,710 exemption (totaling $208,440), there is still at least $560 of equity in the property available to satisfy the lien ($209,000 minus $208,440). Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent

of $20,150 and its fixing will be avoided to that extent subject to 11 U.S.C. § 349(b)(1)(B). The remainder of the lien will not be avoided.

4. 09-43132-A-7 TSAR — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
CDH-8 — 8-18-14 [183]

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.

Hughes Law Corporation, attorney for the trustee, has filed its third interim motion for approval of compensation. The requested compensation consists of $20,043.50 in fees and $0.00 in expenses. The compensation relates solely to the litigation over creditor Lisa Taylor's $2,385,520 proof of claim, based on civil rights and wrongful termination claims asserted against TSAR. The debtor's insurer, Monitor Liability Managers, which provides coverage for the defense of majority of the claims asserted by Ms. Taylor, will reimburse the estate for this compensation (in addition to the movant's second interim compensation, granted for $53,356.50 in fees (substantially reduced) and $4,499.82 in expenses, for a total of $57,856.32, also relating solely to the litigation over Ms. Taylor's proof of claim), less up to an aggregate one-time $15,000 deductible (the actual amount has been calculated to be $12,412.50). The coverage is also subject to a reservation of rights as to wage and hour claims and punitive damages.

This motion covers the period from February 1, 2014 through the present (the services relating to the prior, second interim award were from January 1, 2012 through January 31, 2014 - including only services pertaining to the proof of claim filed by Ms. Taylor). All services in this motion pertain to litigation over the proof of claim filed by Ms. Taylor. The court approved the movant's employment as the trustee's attorney on December 8, 2009.

In performing its services, the movant charged hourly rates of $205 (reduced from as much as $230 an hour) and $245 (reduced from as much as $380 an hour).

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) collecting evidence in support of defenses against Ms. Taylor's claim, (2) communicating with the estate's special counsel in assessing the merits of the claims and defenses, (3) preparing for and attending an all day mediation, (4) assisting special counsel in negotiating a settlement with Ms. Taylor and her bankruptcy estate, (5) preparing and prosecuting motion to approve settlement with Ms. Taylor and her bankruptcy estate, (6) attending court hearings, and (7) communicating with the trustee

about resolution of Ms. Taylor's proof of claim.

The movant's work focused on the bankruptcy aspects of defeating Ms. Taylor's claims.

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.

5. 09-43132-A-7 TSAR
MPO-2

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL
8-18-14 [178]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's special 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.

Gordon & Rees, special counsel for the estate, has filed its second and final motion for approval of compensation. The requested compensation consists of $22,029.50 in fees and $1,704.15 in expenses, for a total of $23,733.65. The compensation relates solely to the litigation over creditor Lisa Taylor's $2,385,520 proof of claim, consisting of civil rights and wrongful termination claims asserted against TSAR. The debtor's insurer, Monitor Liability Managers, which provides coverage for the defense of majority of the claims asserted by Ms. Taylor, will reimburse the estate for the subject compensation, less up to a one-time aggregate $15,000 deductible (the actual amount has been calculated to be $12,412.50). The requested compensation covers the period of January 1, 2014 until the present (the prior compensation period was from April 24, 2013 through December 31, 2013). The court approved the movant's employment as the trustee's special counsel on June 4, 2013. Docket 75. The movant charged hourly rates of $205 and $245.

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) defending Ms. Taylor's claims asserted against the debtor, (2) specifically representing the estate with respect to the employment-related aspects of the claims, (3) preparing for and attending an all day mediation, (4) negotiating settlement with Ms. Taylor and her bankruptcy estate, (5) communicating with the trustee and his general counsel about the merits of the claims and defenses and about the settlement, and (6) preparing for and attending court hearings.

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

approved.

6. 13-35234-A-7 KEITH GILMORE AND ANGELA MOTION FOR
SW-1 BAGNOD RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK N.A. VS. 8-20-14 [33]

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 in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2012 Chevrolet Cruze.

Given the entry of the debtor's discharge on March 24, 2014, 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 movant has produced evidence that the vehicle has a value of $13,925 ($14,450 in Second Amended Schedule B - Docket 19) and its secured claim is approximately $18,133. Docket 35 at 3.

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.

Accordingly, the motion will be granted as to the estate 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.

7. 14-22238-A-7 LARRY/CARMEN MCCARREN MOTION TO
JB-1 AVOID JUDICIAL LIEN
VS. SNIDER LEASING CORP 7-31-14 [39]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Larry McCarren (named as James McCarren

in the complaint) in favor of Snider Leasing Corp. for the sum of $80,051.11 on April 17, 2012. The abstract of judgment was recorded with San Joaquin County on May 8, 2012. That lien attached to the debtor's residential real property in Ripon, California (6th Street). The debtor is asking the court to avoid the subject lien.

Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $200,000 as of the date of the petition. The unavoidable liens total $129,146 on that same date, consisting of a single mortgage in the amount of $67,000 in favor of JPMorgan Chase Bank, a property tax lien in the amount of $344, a tax lien in favor of the IRS in the amount of $25,802, and a tax lien in favor of the California Employment and Development Department in the amount of $36,000. Docket 1, Schedule D.

The motion is incorrect in stating that the debtor claimed an exemption in the amount of $175,000. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $0.00 in Schedule C. Docket 1, Schedule C.

Claiming an exemption of $0.00 is tantamount to claiming no exemption because a judicial lien cannot reduce an exemption value of $0.00. See, e.g., In re Berryhill, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000). The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Claiming an exemption of $0.00 reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied.

The motion will be denied also because it contains other inconsistencies with the schedules. For instance, the motion says that the lien of the California Employment Development Department totals $1,789.62. On the other hand, in Schedule D, the EDD is identified as holding a lien against the property in the amount of $36,000. The court should not have to speculate about the amounts of the liens listed in the motion.

The same is true about the mortgage amount listed in the motion ($67,267.45) - it is different from the mortgage balance listed in Schedule D ($67,000).

The motion makes no effort to harmonize the figures upon which the debtor's lien avoidance calculations are based with the figures in the schedules.

Further, the motion makes no effort to separate the avoidable from the unavoidable liens in calculating whether the subject lien impairs the exemption. The motion lumps all liens - avoidable and unavoidable - together, in calculating the extent of the exemption impairment.

Finally, as the subject lien is a judicial lien, it is not a nonpossessory nonpurchase security interest. Security interests are by definition voluntary encumbrances, mutually exclusive from involuntary judicial liens.

8. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO AVOID JUDICIAL LIEN
JB-2
VS. CAPITAL ONE BANK (USA), N.A. — 7-31-14 [44]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against the debtors in favor of Capital One Bank for the

sum of $9,358.55 on February 1, 2012. The abstract of judgment was recorded with San Joaquin County on March 29, 2012. That lien attached to the debtor's residential real property in Ripon, California (6th Street).

The motion will be denied for the reasons stated in the ruling on the related lien avoidance motion, DCN JB-1.

9. 14-22238-A-7 LARRY/CARMEN MCCARREN — MOTION TO AVOID JUDICIAL LIEN
JB-3
VS. SAVE MART SUPERMARKETS — 7-31-14 [49]

Tentative Ruling: The motion will be denied without prejudice.

A judgment was entered against Debtor Larry McCarren in favor of Save Mart Supermarkets for the sum of $9,258.46 on October 19, 2009. The abstract of judgment was recorded with San Joaquin County on December 3, 2009. That lien attached to the debtor's residential real property in Ripon, California (6th Street).

The motion will be denied for the reasons stated in the ruling on the related lien avoidance motion, DCN JB-1.

10. 02-22348-A-7 BLACK MARKET RECORDS, INC. — MOTION TO APPROVE COMPENSATION OF TRUSTEE
8-7-14 [381]

Tentative Ruling: The motion will be denied without prejudice.

The former chapter 7 trustee, Stephen Reynolds, seeks reimbursement of expenses in the amount of $1,286.84. The movant applied for $500.44 of such expenses in a prior interim compensation motion, but the court did not approve any expenses in connection with that prior motion. Dockets 67 & 77.

The movant was appointed as trustee on the petition date of this case, March 1, 2002, and was replaced by Susan Smith as trustee on November 3, 2010. The expenses in question were advanced between March 6, 2002 and August 12, 2008.

The expense worksheet attached to the motion includes expenses that appear not to be part of the expenses sought by the motion. The motion is seeking reimbursement of $1,286.84 in expenses, whereas the attached worksheet lists expenses totaling $1,508.96. The motion does not say anything about the discrepancy between the two figures.

More important, some of the items on the worksheet are difficult to understand. For example, there is a July 8, 2002 entry for the trustee purchasing a "PeachTree" accounting software for $215.49, but there is no explanation as to why the trustee needed that software. Docket 383 at 2.

Some of the entries identify a pleading or documents but without explanation of why the corresponding expenses were advanced. For instance, on August 11, 2003, the there are three entries, each for a "Motion for Accountant's Fees," but each of the entries lists a different figure for the final expense and lists a different "Rate", $0.83, $0.07, $0.37. Docket 383 at 2. The court cannot tell what these expense entries represent. In the event this motion is refiled, the movant should review and explain each of the pleading / document entries.

The court also cannot tell why the movant had to make three separate bond

payments, $47.35 on February 17, 2004, $85.38 on April 5, 2005, and $89.39 on April 5, 2005. Docket 383 at 3. Given the foregoing deficiencies, the court cannot assess the reasonableness of the advanced expenses. The motion will be denied.

11. 12-41763-A-7 ANTHONY/SANDY GRECO — MOTION TO SELL
HSM-3 — 7-10-14 [64]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for $155,000 to BAPCO, L.L.C. the estate's interest in:

- real property in Citrus Heights, California;

- real property in Granite Bay, California;

- 33.33% interest in 40 undeveloped acres of land in Apache County, Arizona; and

- Greco Partners, L.L.C., which owns interest in the following property, two real properties in Sacramento, California, one real property in Rancho Cordova, California, and Car Cage, Inc.

The trustee also seeks the court to make a good faith finding as to BAPCO under 11 U.S.C. § 363(m).

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

First, the debtors complain that they do not understand what the trustee means by requiring prospective overbidders to demonstrate financial ability to complete their purchase of the assets. This is a typical term required by trustees whenever they are selling an asset and are contemplating potential overbidding. There is nothing vague or ambiguous about the trustee's requirements. It is clear that the requirement requires an overbidder to show to it has the funds to close escrow within the period allotted under the terms of the proposed sale.

This objection is disingenuous and is made for the purpose of delaying or derailing the sale. The debtors made no attempt to contact the trustee about this term prior to filing the opposition. The opposition also does not allege that the debtors are planning to overbid. This objection will be overruled.

Second, the debtors complain that the Citrus Heights and Granite Bay properties have no equity and this "condition remains at the time of hearing." Docket 69 at 2. But, this is not basis for objecting to the sale of those properties, especially given that someone has offered to purchase the estate's interest in the properties.

More, the sale of the properties is subject to any liens and encumbrances and the buyer is aware of this.

The motion states that there may be some equity in the two real properties, but the trustee believes that sale of the properties as part of this transaction is in the best interest of the estate and the creditors, given anticipated delay and transactional and potential tax costs if the properties were to be sold

separately. The trustee claims the same as to the property in Arizona, which is difficult to value being out-of-state land, and is owned only fractionally by the estate.

Third, the fact that the debtors have exempted the property in Arizona is of no consequence either because the exemption claim - which is for the full value of the debtors' interest in the property, $3,722 - will be paid to them from the sale. Docket 26.

Fourth, the objection to the break-up fee will be sustained. The debtors are complaining that it should be 1% to 3% and not the proposed 12%. As admitted even by the trustee, the motion does not set forth facts that substantiate a 12% breakup fee. As noted below, however, this deficiency has been corrected.

As to the opposition by Bank of America, which holds mortgages on both the Citrus Heights and Granite Bay properties, the motion is clear that the sale of those properties is subject to any and all liens or encumbrances.

The court, will not include in the order approving a sale and granting this motion to spell out Bank of America's rights as to the properties. The court does not give declaratory relief without an adversary proceeding. See Fed. R. Bankr. P. 7001(9). The same is true as to Bank of America's request for declaratory relief as to the automatic stay. See also 11 U.S.C. § 362(j) (limiting declaratory relief with respect to the automatic stay to relief granted under 11 U.S.C. § 362(c), which is not implicated here).

Turning to the merits of the motion, as to the value of the estate's 100% interest in Greco Partners, Greco owns 50% interest in three real properties and owns fractional interest in Car Cage Motors, Inc., a used car sales business. The trustee estimates "Greco Partners' 50% share of the equity" in the real properties to be approximately $240,500. As the estate does not own the properties directly, but owns them through Greco Partners, liquidating the equity would require transactional costs and delay that the estate would not have to incur by selling its interest in Greco Partners via this motion. The trustee would recover the equity in the real properties only upon their sale, which may require litigation if the co-owner refuses to agree to sell them. The trustee is also concerned about unanticipated tax and accounting expenses the estate may incur if the real properties are liquidated and the estate's membership interest is distributed. Such potential tax and accounting expenses are being avoided by the subject sale.

As to Car Cage Motors, while it appears to be a viable business, with retained earnings and shareholder equity, it is a closely held corporation in which the estate's 100% interest in Greco Partners appears to own only 36% interest. Amended Schedule B says that the debtors own only 36% interest in Car Cage. Docket 25. The estate's interest in Car Cage appears to be owned via the interest in Greco Partners. As Greco Partners' interest in Car Cage is only fractional, liquidating Greco Partners' interest in Car Cage may lead to considerable transactional expense, delay, and other unanticipated expenses, such as tax liabilities. Also, the market for the fractional interest in Car Cage is likely limited because Car Cage seems to be a closely held corporation.

In light of the above, selling the estate's interest in Greco Partners via this motion, rather than by attempting to sell the assets owned by Greco Partners individually, is in the best interest of the estate and the creditors.

With respect to the reasons why the hearing on the motion was continued, the court is satisfied with the trustee's evidence and briefing as to each of those

reasons.

First, the court is satisfied that the proposed 12% breakup fee is reasonable, given the extensive due diligence required by the buyer in ascertaining the value of the assets being sold. Mr. Royston's declaration in support of the reply to the opposition to the motion (Docket 79) outlines well the costs associated with evaluating each of the assets being sold via this motion. The buyer had to determine the foreclosure status for each real property, had to evaluate leases encumbering some of the properties, had to search and assess other encumbrances, had to review various real estate documents, including without limitation, preliminary title reports, plat maps. The proposed buyer also had to evaluate the books and records of Car Cage Motors, to determine what value to assign to that asset. Some of the research required legal, accounting and real estate advice. Docket 79.

The court also notes that Mr. Royston, as representative of the buyer, spent over 100 hours of his time in conducting the due diligence for the assets being sold. This excludes the hard cost of travel and the utility of title, legal, accounting, and real estate services.

Additionally, the court has found no hard and fast legal authority prohibiting a breakup fee of 12%.

In concluding that the proposed 12% breakup fee is reasonable, the court also takes into account the trustee's opinion and exercise of her business judgment in negotiating such a breakup fee. She states, "[f]rom my experience, therefore, and especially given a deal of this (limited) size, the proposed breakup fee is reasonable." Docket 80 at 2.

Second, the court is also satisfied that the proposed sale is in the best interest of the creditors and the estate, even after taking into account transactional costs and potential tax liabilities. The only transactional costs anticipated by the trustee are estimated $3,100 in closing and escrow costs. As the trustee has not invoked the services of a real estate broker, the estate will not be having to pay any real estate commissions.

And, the estate's accountant has estimated tax liability flowing from the sale not to exceed $13,000. Docket 93 at 2. After taking into account the proposed purchase price of $155,000, the sale will generate a substantial return to the creditors and the estate.

The debtors' complaint that their tax liabilities should be taken into account as well makes no sense. The debtors have not produced any evidence of potential tax liabilities from the subject sale to them personally. More, the standard for approval of the sale is not whether the sale is in the best interest of the debtors.

Third, the trustee has provided an allocation of price for each asset being sold. It is as follows:

$10,000 for the real property in Citrus Heights, California;

$10,000 for the real property in Granite Bay, California;

$5,000 for the 33.33% interest in 40 undeveloped acres of land in Apache County, Arizona; and

$130,000 for the 100% interest in Greco Partners, L.L.C., which owns interest

in the following property:

- real property on Cilker River Way in Rancho Cordova, California ($45,000);
- real property on Franklin Blvd. in Sacramento, California ($45,000);
- real property on Elder Creek Road in Sacramento, California ($25,000); and
- 36% interest in Car Cage Motors, Inc. ($15,000).

The foregoing satisfies the court that the proposed sale benefits the creditors and the estate, even though the trustee is selling assets that are generating only $5,000 and $10,000 a piece. The sale of those assets along with the more valuable assets - as opposed to abandoning the less valuable assets - benefits the creditors and the estate, as there is no additional transactional cost associated with the sale. And, although the largest tax burden will result from the sale of the Citrus Heights property, selling that property as part of this motion still benefits the creditors and the estate because the trustee does not have to incur the costs of preparing, filing and prosecuting a motion to abandon that asset. Docket 93 at 2.

The debtors' complaint that the price allocation is "a fiction" that is a "creation of the buyer," and is designed "to accomplish the 'all or nothing' goal" is rejected. Certainly the buyer may have had input into the price allocation for each asset. The buyer is the one making the offer to purchase the assets. Whether or not the sale is designed as an all or nothing transaction is irrelevant, as the concern is whether there is a benefit to the creditors and the estate.

If the debtors wish to make an offer to purchase the assets, to bestow a greater benefit to the creditors and the estate than the proposed sale, they are free to do so. The debtors have advanced no competing offers to purchase the subject assets. Their sole interest is to defeat the sale and ultimately take back ownership of the assets when they are abandoned back to them under 11 U.S.C. § 554(c).

Finally, even if the debtors had prevailed on any of their objections to the sale, the court is not satisfied with the debtors' standing to challenge the sale. The debtors have not alleged their standing to object to this sale. In addition, the court has been given no evidence of debt that has survived the debtors' discharge. The court sees no priority debt listed in Schedule E. Docket 1, Schedule E. The debts of the estate exceed the nonexempt assets. The court then is perplexed at how the debtors can even claim to have standing to object to the sale.

The motion will be granted and the sale will be approved. The court will make a good faith finding under 11 U.S.C. § 363(m) as to BAPCO.

FINAL RULINGS BEGIN HERE

12. 12-36707-A-7 FAUSTINO/NANCY JOSE — MOTION FOR TURNOVER OF PROPERTY
ICE-1 — 7-28-14 [41]

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

The motion will be granted.

The trustee asks the court to order the debtors to turn over to the trustee their 2012 tax refund in the approximate amount of $8,800.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. There is no requirement that the property is in the possession of the respondent "at the time of the motion." 11 U.S.C. § 542(a) extends to all property in the possession, custody or control during the case. Shapiro v. Henson, 739 F.3d 1198, 1200-01 (9th Cir. 2014).

If the respondent does not have possession of the property at the time of the turnover motion, the trustee may recover the value of the property. Shapiro v. Henson, 739 F.3d 1198, 1200-03 (9th Cir. 2014); see also 11 U.S.C. § 542(a).

If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013).

"If a debtor demonstrates that [he] is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman at 202 (quoting Rynda v. Thompson (In re Rynda), Case Nos. NC-11-1312-HDoD, 09-41568, 2012 WL 603657, at *3 (B.A.P. 9th Cir. Jan. 30, 2012)).

This case was filed on September 14, 2012 and the debtors received their discharge on January 7, 2013.

The debtors' 2012 tax refund is not listed in Schedule B and is not claimed as exempt in Schedule C. Dockets 16 & 17.

Even though the trustee has made a verbal demand for the debtors to turn over to the estate the refund, the debtors have not done so thus far. Docket 43.

Accordingly, the court will order turnover of the estate's portion of the refund and will enter a money judgment for the estate's portion of the refund. The motion will be granted.

13. 14-24008-A-7 CALVIN CHANG — MOTION TO EMPLOY
HCS-2 — 8-11-14 [33]

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

The motion will be granted.

The trustee seeks approval to employ Anthony Luti of the Luti Law Firm and Dennis Wilson of the Wilson Trial Group, as special counsel for the estate to continue prosecuting an employment discrimination action currently on appeal before the California Third District Court of Appeal. The defendant is the Regents of the University of California.

The proposed compensation to the special counsel is a 33.3% of the net recovery in the lawsuit (gross recovery including any attorney's fees, minus costs), whether through judgment, settlement or otherwise. Special counsel will continue to advance all costs and will be reimbursed for advanced costs only from recovery obtained in the action. Special counsel will not have a lien on any recovery from the action. The lien contained in the special counsel's retainer agreement with the debtor is superceded by the retainer agreement with the estate.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. Mr. Luti and Mr. Wilson are disinterested persons within the meaning of 11 U.S.C. § 327(a) and do not hold an interest adverse to the estate. Accordingly, the motion will be granted.

14. 12-24710-A-7 NONATO/JOYCE GAOIRAN — MOTION TO ABANDON
HCS-3 — 8-11-14 [81]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee wishes to abandon the estate's interest in a real property in Benicia, California. The property is over-encumbered.

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

The property has an approximate value of $468,750, whereas its encumbrances total approximately $827,286, consisting of two mortgages held by JPMorgan Chase Bank. Given this, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

15. 12-24710-A-7 NONATO/JOYCE GAOIRAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 8-7-14 [74]
JPMORGAN CHASE BANK, N.A. VS.

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

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

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Benicia, California.

Given the entry of the debtor's discharge on June 25, 2012, 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 $468,750 and it is encumbered by claims totaling approximately $802,286. The movant's deed is in first priority position and secures a claim of approximately $640,000.

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.

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

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

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

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

16. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-18 — 8-11-14 [695]

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.

The trustee requests approval of a settlement agreement between the estate and RLRCO, Inc. dba Raneri & long Roofing Company, resolving preference litigation for the avoidance and recovery of $28,001.69 in transfers made by the debtor within 90 days prior to the petition date.

Under the terms of the compromise, RLRCO will pay $7,000 to the estate in full satisfaction of the preference claims against them. The trustee will dismiss the pending adversary proceeding.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the raised contemporaneous exchange and ordinary

course of business defenses, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

17. 14-24017-A-7 KENNETH/JOANN ASBURY — OBJECTION TO EXEMPTIONS
BHS-2 — 7-29-14 [43]

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, 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 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 exemption of a 2002 Acura TLS vehicle. The Acura vehicle has been claimed as exempt pursuant to Cal. Civ. Proc. Code § 704.060 in the amount of $3,825, which is the scheduled value of that vehicle.

The debtors have also claimed a 2003 GMC Yukon Denali vehicle as exempt pursuant to Cal. Civ. Proc. Code § 704.010 in the amount of $2,900.

The exemption claimed in the Acura will be disallowed because Cal. Civ. Proc. Code § 704.060 allows an exemption only as follows:

"(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) Six thousand seventy-five dollars ($7,625), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) Six thousand seventy-five dollars ($7,625), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

. . .

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under

subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section."

The Acura is not a commercial vehicle, it is a four door passenger vehicle. And, there is no convincing evidence that it is used as a commercial vehicle. Thus, the exemption under Cal. Civ. Proc. Code § 704.060 is not available because that statute is limited to one commercial vehicle.

Indeed, the debtors are not engaged in any activity that would require a commercial or an otherwise special vehicle that would qualify as a tool, implement, instrument of their trade, business or profession, within the meaning of Cal. Civ. Proc. Code § 704.060. The debtor is employed as an account executive with Ricoh and the co-debtor is employed as an office administrator with the Elk Grove School District. See Schedule I.

Accordingly, the objection will be sustained.

18. 10-44626-A-7 DENISE/JOSEPH CAUDLE — MOTION TO AVOID JUDICIAL LIEN
MG-8
VS. KBR, INC. — 8-7-14 [89]

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 the debtor in favor of KBR for the sum of $2,366.08. The abstract of judgment was recorded with Solano County on October 19, 2009. That lien attached to the debtors' 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 has an approximate value of $125,235 as of the date of the petition. The unavoidable liens total at least $137,764. The debtor claimed an exemption in the amount of $100.

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).

19. 10-44626-A-7 DENISE/JOSEPH CAUDLE — MOTION TO AVOID JUDICIAL LIEN
MG-8
VS. TARGET NATIONAL BANK — 8-7-14 [95]

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 co-debtor Denise Caudle in favor of Target National Bank for the sum of $5,737.62 on December 11, 2009. The abstract of judgment was recorded with Solano County on October 28, 2010. That lien attached to the debtor's residential real property residence in Vacaville, California (5362 Alonzo Road).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $125,235 as of the date of the petition. The unavoidable liens total $137,764 on that same date, consisting of a single mortgage in favor of First Horizon Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100 in Second Amended Schedule C. Docket 59.

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).

20. 14-27236-A-7 ANTONE/ANA SILVA — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 8-7-14 [11]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2008 BMW 528i vehicle.

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

property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on July 14, 2014 and a meeting of creditors was first convened on September 11, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than August 13. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle but without indicating whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed.

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

Here, although the debtor indicated an intent to retain the vehicle, the debtor did not state whether the debt secured by the vehicle will be reaffirmed or the vehicle will be redeemed. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on August 13, 2014, 30 days after the petition date.

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 August 13, 2014.

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.

21. 14-24449-A-7 ROBERT/KATHLEEN BRANSON — MOTION TO COMPEL ABANDONMENT 7-31-14 [21]
CAH-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf.

Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

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

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

According to the debtors, the value of the property is $300,000. Docket 24 ¶ 19. The property is encumbered by a single deed of trust in favor of Stearns Lending in the amount of $193,820.79 and a mechanics lien in favor of SMUD in the amount of $6,491, for a total of $200,311.79. The debtors have exempted $175,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730. Docket 20.

Given the scheduled value of and encumbrances against the property and the debtors' exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

22. 14-26754-A-7 BINDI/MELISSA DAMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 8-8-14 [12]
SANTANDER CONSUMER USA, INC. VS.

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

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2008 Nissan Sentra. The movant has produced evidence that the vehicle has a value of $9,275 ($8,852 in Schedule B) and its secured claim is approximately $17,242. Docket 14 at 3.

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 report of no distribution on August 6, 2014.

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.

23. 14-27060-A-7 RICHARD/CRYSTAL ROOT — MOTION TO COMPEL ABANDONMENT
JKF-1 — 8-8-14 [17]

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.

The debtors request an order compelling the trustee to abandon the estate's interest in their sole proprietorship heating and air business, De Air Company.

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.

According to the motion, the business assets include "[v]arious hand tools and accessories" with a scheduled value of $3,637 and the business name (dba) with a scheduled value of $1.00. Schedule B, items 13 & 29. The assets have an aggregate value of $3,638 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

24. 14-23065-A-7 WILLIAM/CHERYL METZ — MOTION TO AVOID JUDICIAL LIEN
GJS-1 — 7-31-14 [24]
VS. CAPITAL ONE BANK (USA), N.A.

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 co-debtor Cheryl Metz in favor of Capital One Bank for the sum of $5,469.24 on August 31, 2009. The abstract of judgment was recorded with Sacramento County on March 24, 2014. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $71,900 as of the date of the petition. The property was unencumbered on that same date. Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule 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).

25. 14-23065-A-7 WILLIAM/CHERYL METZ — MOTION TO AVOID JUDICIAL LIEN
GJS-2
VS. CAPITAL ONE BANK (USA), N.A. — 7-31-14 [21]

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 co-debtor Cheryl Metz in favor of Capital One Bank for the sum of $4,781.79 on February 17, 2011. The abstract of judgment was recorded with Sacramento County on November 1, 2011. That lien attached to the debtor's residential real property in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $71,900 as of the date of the petition. The property was unencumbered on that same date. Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 in Schedule 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).

26. 14-20583-A-7 LARRY JENT
PD-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-1-14 [121]

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

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

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Lehigh Acres, Florida.

Given the entry of the debtor's discharge on August 27, 2014, 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 $75,000 and it is encumbered by claims totaling approximately $203,334. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale (or judicial foreclosure sale only if nonjudicial foreclosure is unavailable as a remedy in Florida) and to obtain possession of the subject property following sale. 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 not be waived.

27. 10-50184-A-7 GARRY/MARY PACE
HCS-2

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
8-11-14 [35]

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 $3,487 in fees and $99.10 in expenses, for a total of $3,583.10. This motion covers the period from April 23, 2014 through the present. The court approved the movant's employment as the trustee's attorney on May 9, 2014. Docket 34. In performing its services, the movant charged hourly rates of $90, $275, $295, $325.

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) communicating with the debtor's counsel in a personal injury litigation, after the bankruptcy case had closed on March 4, 2011, (2) preparing and prosecuting a motion to reopen the bankruptcy case, (3) reviewing settlement of the personal injury litigation and discussing it with the trustee, and (4) preparing a letter for turnover of settlement proceeds from the personal injury litigation.

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.

By granting this motion, the court is not approving the settlement of the personal injury litigation and is not approving the compensation of counsel who represented the debtor's and/or the estate's interests in that litigation.