

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 30, 2013 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:

**1, 2, 4**

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.**

December 30, 2013 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 27, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 13 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 21, 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. 13-34523-A-7 PAULINE TAYLOR MOTION FOR  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE CORP. VS. 12-4-13 [11]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2011 Acura TSX 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 November 13, 2013 and a meeting of creditors was first convened on December 18, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than December 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 December 13, 2013, 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. The court also notes that the trustee filed a "no-asset" report on December 19, 2013, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on December 13, 2013.

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.

2. 13-33438-A-7 CLAYTON/CYNTHIA CODE MOTION FOR  
NMB-1 AUTOMATIC STAY  
360 MORTGAGE GROUP, L.L.C. VS. 12-16-13 [18]

**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, 360 Mortgage Group L.L.C., seeks relief from the automatic stay as to a real property in Anderson, California. The property has a value of \$120,000 and it is encumbered by claims totaling approximately \$176,853. The movant's deed is in first priority position and secures a claim of approximately \$149,251.

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. And, in the statement of intention, the debtor has indicated an intent to surrender the property.

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

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That

period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

3. 13-26139-A-7 FRAN/TRISHA PENA MOTION TO  
BRR-1 COMPEL ABANDONMENT  
11-27-13 [29]

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

The debtor moves for abandonment of all property listed in Schedules A and B, except for a \$400,000 annuity. The basis for the motion is that "[t]he trustee has indicated he has no interest in disposing of the estate's interests in these Properties, with the exception of the Debtor's interest in the annuity." Docket 29 ¶ 6.

The motion will be denied for two reasons.

First, the trustee's statements about which property he intends to abandon is not a basis for the abandonment of property. 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. In other words, regardless of the trustee's intentions, this court may order the abandonment of property only if such property is burdensome or of inconsequential value to the estate.

Second, the court will not grant any motion for abandonment that does not identify each property item sought to be abandoned and does not establish why abandonment is warranted as to each item. The motion will be denied.

4. 13-32751-A-7 FROILAN/VIOLETA TAFALLA MOTION TO  
SLC-1 COMPEL AND FOR TURNOVER  
12-10-13 [14]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor 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 trustee requests the court to direct the debtors to turn over to the estate their 2012 tax refund in the amount of \$19,712. The return was signed by the debtors on October 7, 2013. In addition, the trustee asks the court to direct the debtors to appear at the meeting of creditors.

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. It extends to all property in the possession, custody or control during the case. 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).

“The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341 (a) of this title.” 11 U.S.C. § 343.

The debtors have not disclosed or exempted any interest in the 2012 tax refund. The debtors have also refused to turn over the refund to the trustee. The debtors have not appeared at any of the three meetings of creditors. This case was filed on September 30, 2013. The initial meeting of creditors was held on November 6, 2013. Two subsequent meetings have been held, one on November 20 and another on December 4. The debtors have not appeared at any of the meetings.

Given the foregoing, the court will enter an order requiring the debtors to turn over the refund to the estate and to appear at the next meeting of creditors on January 8, 2014 at 10:00 a.m. In the event the debtors fail to comply with the court’s order, the trustee may apply for sanctions.

5. 13-34876-A-7 DOUGLAS/LISA BALMAIN MOTION FOR  
DBJ-1 AUTOMATIC STAY  
TRI COUNTIES BANK VS. 12-11-13 [11]

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

The movant, Tri Counties Bank, seeks relief from the automatic stay with respect to equipment, inventory and receivables.

However, the personal property at issue belonged to a now defunct corporation, Big Valley Ready Mix, Inc. And, it was Big Valley that borrowed the loan secured by the property. The debtor in this proceeding is not Big Valley, it is Douglas and Lisa Balmain.

More, the debtors have not listed ownership interest in the subject property. See Schedule B. Their listing of ownership interest in Big Valley does not mean that they own the subject property. Thus, for purposes of 11 U.S.C. § 362(a), the automatic stay in this case does not affect the subject property. Thus, the motion will be denied as unnecessary.

This is not a declaratory judgment. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(9).

6. 13-28194-A-7 JOHN KING MOTION TO  
BMW-4 AVOID JUDICIAL LIEN  
VS. GRANT AND WEBER 11-20-13 [32]

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

A judgment was entered against the debtor in favor of Grant & Weber, for the sum of \$7,877.50 on April 20, 2012. The abstract of judgment was recorded with Sacramento County on September 5, 2012. That lien attached to the debtor’s residential real property in Rancho Cordova, California. The debtor claims

that the current amount of the judgment underlying the lien is \$9,038.62, which includes interest.

The debtor is asking the court to avoid the judicial lien, to the extent of \$7,193.24.

The motion will be denied for three reasons.

First, on Schedule A the subject real property has an approximate value of \$58,068 as of the date of the petition. Yet, the debtor has submitted a declaration with this motion stating that the value of the property is \$105,084. Docket 34. The debtor has not explained this discrepancy in his statements under penalty of perjury.

Second, assuming the court agrees with the debtor that the value of the property is \$105,084, the debtor's exemption in the property is not impaired. The unavoidable liens total \$19,200 on that same date, consisting of a mortgage in favor of Bank of America in the amount of \$16,000 and outstanding property taxes in the amount of \$3,200. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000 in Schedule C. After subtracting the \$75,000 exemption and the \$19,200 in unavoidable liens, there is still \$10,884 in equity for satisfaction of the lien. The debtor's exemption claim in the property is not impaired.

Third, in addition to the property valuation discrepancy, there is a discrepancy as to the total amount of the lien. Even though the debtor claims that the current amount of the judgment underlying the lien is \$9,038.62, including interest, Schedule D lists the amount of the lien as \$20,438. The debtor does not explain how only \$9,038.62 from the total \$20,438 amount listed in Schedule D can be the judicial lien amount, when Schedule D says that \$20,438 is the amount for the creditor's judgment lien. The court should not have to speculate about the total amount of the lien, especially when there is equity available for the satisfaction of the lien.

The motion will be denied.

**FINAL RULINGS BEGIN HERE**

7. 13-33610-A-7 PAUL HOCKSTAFF MOTION FOR  
KMR-1 AUTOMATIC STAY  
PNC BANK, N.A. VS. 11-21-13 [14]

**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, PNC Bank, seeks relief from the automatic stay as to a real property in Magalia, California. The property has a value of \$50,000 and it is encumbered by claims totaling approximately \$62,617. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on November 20, 2013.

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

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

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

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

8. 11-44616-A-7 LOYD/VERNA HOSTETTER COUNTER MOTION FOR  
DNL-2 TURNOVER  
11-27-13 [42]

**Final Ruling:** As this is a countermotion to the debtors' motion to compel abandonment (DCN LBG-1) that is to be heard on January 27, 2014 at 10:00 a.m., the hearing on the instant motion will be continued to January 27, 2014 at

10:00 a.m. See Dockets 37, 38, 52.

9. 13-32024-A-7 JAMES CONKLIN MOTION TO  
EJS-1 AVOID JUDICIAL LIEN  
VS. AMERICAN EXPRESS BANK, F.S.B. 11-21-13 [11]

**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 (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.

A judgment was entered against the debtor in favor of American Express Bank for the sum of \$47,925.82 on April 5, 2013. The abstract of judgment was recorded with San Joaquin County on or about August 22, 2013. That lien attached to the debtor's residential real property located in Stockton, 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 \$500,000 as of the date of the petition. The unavoidable liens total \$604,452 on that same date, consisting of a first mortgage for \$438,536 in favor of Bank of America and a second mortgage for \$165,916 in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 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).

10. 11-25725-A-7 MATT/RITA OMARY MOTION TO  
SCF-5 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY (FEES \$7,500, EXP.  
\$105.60)  
12-2-13 [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 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.

Macdonald Fernandez, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$7,500, reduced from \$8,385 in fees and \$105.60 in expenses. This motion covers the period from May 18, 2011 through September 12, 2013. The court approved the movant's employment as the trustee's attorney on July 19, 2011. In performing its services, the movant charged hourly rates of \$250 and \$350.

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 investigation of assets for administration, (2) analyzing claims against the estate, (3) assisting the estate with the sale of interest in a real property, (4) obtaining court approval of the sale, 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.

11. 12-22432-A-7 SHARON FISH MOTION TO  
PEQ-1 APPROVE COMPENSATION OF ACCOUNTANT  
(FEES \$1,220)  
12-2-13 [85]

**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.

Ryan, Christie, Quinn & Horn, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of \$1,220 in fees and \$0.00 in expenses. This motion covers the period from May 14, 2013 through November 5, 2013. The court approved the movant's employment as the estate's accountant on June 20, 2012. In performing its services, the movant charged hourly rates of \$175 and \$250.

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 the review of prior tax returns and the preparation of 2012 and 2013 estate tax returns. The movant also discussed tax issues with the trustee.

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

12. 12-22432-A-7 SHARON FISH  
SLF-11

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY (FEES \$6,000)  
12-2-13 [80]

**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.

The Suntag Law Firm, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$6,000, reduced from \$13,089.50 in fees and \$343.19 in expenses. This motion covers the period from April 4, 2012 through the present. The court approved the movant's employment as the trustee's attorney on May 7, 2012. In performing its services, the movant charged hourly rates of \$195, \$225, \$295 and \$315.

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) investigating the debtor's interest in a real property in Manteca, California, (2) analyzing the debtor's exemption in the Manteca property, (3) assisting the estate with the court approval and sale of a real property in Oregon, and (4) 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. 13-33332-A-7 MARINA KONIKOVA  
TAA-1

TRUSTEE'S MOTION TO  
DISMISS  
11-22-13 [19]

**Final Ruling:** This motion was set for hearing in error. It was granted on December 20, 2013. Docket 23.

14. 13-26551-A-7 MICHAEL HOLT  
SLF-14

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY (FEES \$47,228.49)  
11-26-13 [164]

**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.

The Suntag Law Firm, attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of \$45,000 in fees (reduced from \$48,722.78) and \$2,228.49 in expenses, for a total of \$47,228.49. This motion covers the period from May 22, 2013 through November 8, 2013. The court approved the movant's employment as the trustee's attorney on June 3, 2013. In performing its services, the movant charged hourly rates of \$195, \$225, \$250, \$295 and \$315.

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) preparing stipulations with the debtor about the extension of the deadline to file exemption objections and to appear at a 2004 exam, (2) preparing and filing motions for extension of the time to assume or reject executory contracts, (3) analyzing assets extensively, including, without limitation, the debtor's interest in entities and the potential for prosecuting causes of action against those entities, (4) reviewing stay relief motions, (5) assisting the estate with the recovery and sale of a Porsche vehicle, (6) obtaining court approval of the sale, (7) analyzing a domestic support claim by Janet Holt, (8) conducting legal research on issues pertaining to the recovery and administration of assets, (9) recovering the debtor's interest in Asset Strategies & Management, (10) assisting the trustee with the sale of the estate's interest in the Silicon Valley Holdings, L.L.C., (11) preparing the sale agreement and obtaining court approval of the sale, (12) preparing and prosecuting a motion to abandon vehicles and a real property, (13) investigating a pending \$1.5 million state court action against the debtor, (14) preparing and filing an objection to the debtor's exemption in his residence, and (15) 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.

15. 13-31252-A-7 CAROL MULANAX-JACINTO MOTION TO  
DVD-1 AVOID JUDICIAL LIEN  
VS. UNIFUND CCR PARTNERS 11-20-13 [18]

**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 (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.

A judgment was entered against the debtor in favor of Unifund CCR Partners for the sum of \$11,085.34 on February 18, 2009. The abstract of judgment was recorded with San Joaquin County on April 21, 2009. That lien attached to the debtor's residential real property in Stockton, 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 \$110,000 as of the date of the petition. The unavoidable liens total \$146,168 on that same date, consisting of a mortgage for \$101,873 in favor of JPMorgan Chase Bank, a mortgage for \$34,295 in favor of JPMorgan Chase Bank and a mortgage for \$10,000 in favor of Amerinational Community. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100 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).

16. 13-31252-A-7 CAROL MULANAX-JACINTO MOTION TO  
DVD-2 AVOID JUDICIAL LIEN  
VS. BENEFICIAL CALIFORNIA, INC. 11-22-13 [24]

**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 (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.

A judgment was entered against the debtor in favor of Beneficial California, Inc. for the sum of \$9,496.34 on March 1, 2006. The abstract of judgment was recorded with San Joaquin County on April 10, 2006. That lien attached to the debtor's residential real property in Stockton, 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 \$110,000 as of the date of the petition. The unavoidable liens total \$146,168 on that same date, consisting of a mortgage for \$101,873 in favor of JPMorgan Chase Bank, a mortgage for \$34,295 in favor of JPMorgan Chase Bank and a mortgage for \$10,000 in favor of Amerinational Community. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100 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).

17. 13-31252-A-7 CAROL MULANAX-JACINTO MOTION TO  
DVD-3 AVOID JUDICIAL LIEN  
VS. LVNV FUNDING, L.L.C. 12-2-13 [29]

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

A judgment was entered against the debtor in favor of LVNV Funding, L.L.C. for the sum of \$5,044.41 on April 14, 2008. The abstract of judgment was recorded with San Joaquin County on July 14, 2008. That lien attached to the debtor's residential real property in Stockton, 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 \$110,000 as of the date of the petition. The unavoidable liens total \$146,168 on that same date, consisting of a mortgage for \$101,873 in favor of JPMorgan Chase Bank, a mortgage for \$34,295 in favor of JPMorgan Chase Bank and a mortgage for \$10,000 in favor of Amerinational Community. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$100 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).

18. 13-23459-A-7 EVANGELINA AGUILAR MOTION TO  
HLG-4 AVOID JUDICIAL LIEN  
VS. CAVALRY SPV I, L.L.C. 12-4-13 [118]

**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 (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.

A judgment was entered against the debtor in favor of Cavalry SPV I, L.L.C. for the sum of \$8,191.78 on June 11, 2012. The abstract of judgment was recorded with Sutter County on October 8, 2012. That lien attached to the debtor's

residential real property located in Yuba City, 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 \$189,000 as of the date of the petition. The unavoidable liens total \$403,990 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended 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).

19. 05-34866-A-7 PETER KIDD MOTION TO  
MOH-2 AVOID JUDICIAL LIEN  
VS. TARGET NATIONAL BANK 11-21-13 [25]

**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 (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.

A judgment was entered against the debtor in favor of Target National Bank for the sum of \$5,333.71 on October 1, 2004. The abstract of judgment was recorded with Butte County on November 23, 2004. That lien attached to the debtor's residential real property in Magalia, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of \$70,000 as of the date of the petition. The unavoidable liens total \$63,000 on that same date, consisting of a single mortgage in favor of R. Holley. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$7,000 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).

20. 13-30572-A-7 RICHARD EDWARDS MOTION FOR  
RMD-1 AUTOMATIC STAY  
EVERBANK VS. 11-22-13 [14]

**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



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 debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Rocklin, California.

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

The debtors have scheduled the value of the property at \$301,123. The property is encumbered by liens totaling \$231,391, consisting of a first mortgage for \$188,806 in favor of Bank of America and second mortgage for \$42,585 also in favor of Bank of America. The debtors have exempted \$100,000 in the property pursuant to Cal. Code Civ. Proc. § 704.730. Docket 18. Given the value, encumbrances and the exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.