UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 25, 2014 at 10:00 a.m.

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

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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 SEPTEMBER 22, 2014 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 8, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 15, 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. 13-30804-A-11 ELWYN/JEANNINE DUBEY — MOTION TO APPROVE AMENDED DISCLOSURE STATEMENT 7-14-14 [159]

Tentative Ruling: The motion will be denied.

The debtors are asking the court to approve their disclosure statement (combined with plan) filed on July 14, 2014. Docket 159.

The California Franchise Tax Board and the IRS both oppose approval of the disclosure statement.

The debtors have filed a reply.

The court cannot approve the debtors' disclosure statement for the following reasons, among others:

(1) The disclosure statement does not contain sufficient information about how the debtors will pay all of their nondischargeable debt to the FTB. The FTB's proofs of claim, 2-2 and 3-2, contain tax debt for tax years for which the debtors did not file tax returns. See 11 U.S.C. § 523(a)(1)(B)(i).

(2) The disclosure statement does not contain sufficient information about how the debtors are planning to pay FTB's and IRS' claims in full, given that:

- those creditors are not planning to vote to accept the plan;

- those creditors dominate each of the impaired classes in the plan;

- the real properties the debtors are planning to sell have a scheduled value of less than $1 million, while only IRS' claim exceeds $2 million; and

- besides the proposed sale of the real properties, the debtors do not disclose another source of income from which the plan can be funded.

(3) The disclosure statement does not accurately reflect the amounts of the proofs of claim filed by the FTB and the IRS. For instance, FTB's general unsecured claim is not in the amount of $516,496.65. Docket 159 at 4. FTB's general unsecured debt totals $821,094.15, as reflected by POCs 1-2, 2-2 and 3-2.

(4) The disclosure statement does not unequivocally state what the debtors will do with all proceeds from the sale of the real properties, implying that the debtors will keep some of the proceeds from the sale of the properties. The disclosure statement does not explain how the debtors will circumvent the absolute priority rule, which prohibits them from retaining any property if they are not paying all claims senior to their claim against the estate in full or such senior claimants accept the plan.

The disclosure statement does not contain sufficient information to apprise creditors on whether and how to vote on the plan. The court cannot approve the disclosure statement with the above deficiencies.

The debtors' response that the FTB and the IRS have not substantiated their

claims with evidence misses the point. These creditors' proofs of claim are presumptively valid and it is up to the debtors to successfully object to the proofs of claim. The debtors have already attempted to object to the proofs of claim of the FTB and the IRS, but those objections were overruled. Dockets 145 & 147. The motion will be denied.

2. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-16 — 7-28-14 [683]

Tentative Ruling: The motion will be denied without prejudice.

The trustee requests approval of a settlement agreement between the estate, on one hand, and Heat & Frost Insulators of Northern California Local Union 16 Health and Welfare Fund, Western States Insulators and Allied Workers' Pension Plan, Western States Insulators and Allied Workers' Individual Account Plan, Western States Insulators and Allied Workers' Health Plan, and Heat & Frost Insulators of Northern California Local Union 16, on the other hand, resolving preference litigation for the avoidance and recovery of $130,616.07 in transfers made by the debtor within 90 days prior to the petition date.

Under the terms of the compromise, the parties enumerated above will pay $6,000 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 motion will be denied as the movant has not established that settling for effectively 4.5% of the face amount of the transfers in question is in the best interests of the creditors and the estate. The reasons cited by the motion for approval of the settlement are: the probability of success "is unknown at this time;" the settlement will avoid the expenses of further litigation; and the adversary proceeding involves complex issues, including the ordinary course of business defense.

However, the fact that the trustee does not know the probability of success at this time means that he has done little or nothing to evaluate this litigation, including the asserted defenses. Risk is present with every litigation. And, preference defendants routinely assert ordinary course of business, new value and contemporaneous exchange as defenses before they have even had a chance to evaluate their liability. The fact that those defenses are asserted but the trustee still does not know what is the probability of success suggests to the court that the trustee has not fully evaluated the merits of the asserted defenses. The court has seen no discussion of any asserted defense meritting a settlement of 4.5% of the transfers' face amount. The court is not persuaded that the proposed settlement is in the best interests of the creditors and the estate. The motion will be denied without prejudice.

3. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO DISMISS ADVERSARY PROCEEDING
14-2119 SJL-1
MCGRANAHAN V. WESTERN STATES ASBESTOS WORKERS' TRUST FUNDS
5-29-14 [7]

Tentative Ruling: The motion will be dismissed as moot given that the parties have reached a settlement agreement.

4. 13-23517-A-7 TRACY GATEWAY, LLC — MOTION TO SELL
HCS-3
7-28-14 [81]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell all the estate's claims under 11 U.S.C. § 544 to 11 U.S.C. § 553 and under California law, including, without limitation, Cal. Civ. Code § 3439, against any and all parties, except for:

- the City of Tracy, and

- the Sutter entities, including, without limitation, Sutter Tracy Community Hospital, Sutter Central Valley Hospitals, Sutter Health, and any and all affiliates, successors, or assigns of any of those entities or of any Sutter entity).

For more details about the claims being sold as part of this motion, parties in interest should review the motion and all corresponding attachments.

The proposed purchaser is CA BK Distressed Assets Fund IV, LLC and the proposed purchase price is $20,000 plus 40% of any net recovery from the claims.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for a finding of good faith 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. The sale will generate some proceeds for distribution to creditors of the estate, which proceeds will be available immediately. Also, by selling the claims, the estate avoids having to incur the typical litigation costs. The sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will make a finding of good faith under 11 U.S.C. § 363(m).

5. 12-36347-A-7 ARNOLD THREETS AND TESSA BANUELOS-THREETS — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
MH-2
7-18-14 [186]

Tentative Ruling: The motion will be denied without prejudice.

Mayall Hurley, PC, former counsel for the trustee, has filed its first and final motion for approval of compensation.

The trustee opposes the motion. The trustee retained new counsel, as evidenced by the court's December 10, 2012 order approving the substitution of Pino & Associates in the place of the movant. Docket 47. The debtors have filed a joinder to the opposition.

The requested compensation consists of $14,355 in fees and $138.33 in expenses, for a total of $14,493.33. This motion covers the period from September 11, 2012 through and including November 5, 2012. The court approved the movant's employment as the trustee's attorney on September 26, 2012. In performing its services, the movant charged an hourly rate of $275.

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) analyzing the estate's interest in the pending litigation involving the City of Richmond; (2) attending a full-day settlement conference; (3) attempting to obtain abandonment of the estate's interest in pending litigation; and (4) communicating with the trustee, other counsel and attending hearings and meetings.

First, the movant did not separate its time entries by project categories, with time spent and compensation sought for each category. And, the motion does not discuss the reasonableness and necessity requirements for each of the categories. It is incumbent on the movant to establish these requirements in its motion. This alone is basis for denying the motion in its entirety.

Second, the motion will be denied to the extent it is seeking compensation for services related to the preparation and filing of the Notice of Trustee's Intent to Abandon Property of the Estate. Docket 22. The motion does not establish that those services were necessary. This is especially important in light of the fact that the Notice violated the court's Local Bankruptcy Rules and was removed from calendar and dismissed summarily by the court without a hearing. Docket 82.

Third, the compensation sought for the preparation, filing and service of the Notice, per the movant's November 2, 2012 time entry for 1.7 hours, is unreasonable. The court will not approve compensation for the service and filing of pleadings. These are tasks that do not warrant billing at $275 an hour, as they could have been easily completed by trained support staff. The court will deny compensation for those tasks.

On the other hand, as to the compensation for the movant's other services pertaining to the abandonment of the estate's interest in the litigation - which was in essence a sale of that interest - the trustee's opposition does not state that he did not authorize the movant to perform those services, whether or not they should have been executed as an abandonment or sale. From this, the court infers that the movant's services were authorized by the trustee.

Fourth, as the movant has lumped the November 2, 2012 time entry, the court cannot tell how much time it actually took the movant to prepare the Notice. More, the Notice is only little over one page long. The court is not persuaded that it took the movant 1.7 hours to prepare, serve and file the Notice.

Fifth, besides the November 2, 2012 time entry, the movant has lumped many of its other time entries, with all lumped time entries exceeding 0.5 hours in duration. The U.S. Trustee Guidelines for Reviewing Compensation Applications allow lumping only when the tasks performed do not exceed 0.5 hrs. on a daily aggregate.

As the court cannot tell how much time the movant actually spent on individual tasks within lumped time entries, the court cannot determine whether the time

spent on each task was reasonable. Accordingly, the court will deny all compensation based on lumped time entries.

Finally, although the movant has not sought the approval of its fees by the trustee, this is not fatal to obtaining approval of payment of its fees and costs, given that the court's adjudication of this motion is governed by the requirements of 11 U.S.C. § 330(a)(1)(A)&(B).

The motion will be denied.

6. 14-27854-A-7 KELLI GRAVES — MOTION TO COMPEL ABANDONMENT 8-7-14 [9]
NBC-1

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

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property in Redding, California and the estate's interest in a business, The Spa Downstairs.

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 real property has a scheduled value of $160,000, whereas it is encumbered by a single mortgage in favor of Provident Funding Associates for approximately $164,909.

Given the value of and encumbrances against the real property and given anticipated liquidation costs, the property is of inconsequential value to the estate.

According to the motion, the business assets include: goodwill with a scheduled value of $3,000; assets - which Schedule C identifies as equipment, product and furniture in Schedule B item 28 - with a scheduled value of $5,000; and a commercial lease with a scheduled value of $10. The above business assets have been claimed as fully exempt in Schedule C.

Given the exemption claims, 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.

7. 12-38363-A-7 WILLIAM ST CLAIR — MOTION FOR
TMG-1 — RELIEF FROM AUTOMATIC STAY
THE MONEY BROKERS, INC. VS. — 8-5-14 [210]

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

The movant, The Money Brokers, Inc., seeks relief from the automatic stay as to a real property in Oroville, California. In the motion, the property is identified as 3428 Highway 70, whereas in the schedules the property is identified as 3248 Highway 70.

Given the entry of the debtor's discharge on November 20, 2013, 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 claims that the value of the property is $55,500 based on an appraisal the movant apparently obtained. The movant states that it "obtained an appraisal of the Property which reflects a value of $55,500 and we accept that as the value for purposes of this motion." Docket 212 at 3.

However, the court cannot find any evidence of the referenced appraisal in the record. Thus, at best, the reference to the appraisal's valuation of the property is inadmissible hearsay.

The court also notes that the debtor's last amendment of Schedule A, Docket 201, lists the value of the property as "Unknown".

As a result, the court cannot tell whether there is equity in the property and cannot determine whether and to what extent the movant's interest in the property may be protected.

Finally, the movant's assertion of lack of insurance on the property is unsubstantiated by probative evidence. Mr. Eckert's supporting declaration states only that the movant has not received proof of insurance. Docket 212 at 4. The motion will be denied as to the estate.

8. 14-24563-A-7 TERRY/KYLE HODGES — MOTION TO
BHS-2 — SELL
7-16-14 [26]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and without warranties for $14,000 the estate's interest in a real property in Wilton, California to the debtors. Although the property has a scheduled value of $400,591, the trustee believes the value of the property to be $450,000. The debtors have exempted $175,000 in the property and the property is subject to secured debt totaling $218,500, consisting of a single mortgage in favor of Central Mortgage Company. This leaves approximately $7,091 of non-exempt equity, based on the $400,591 valuation. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

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

for distribution to creditors of the estate. The sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate, especially after accounting for 8% of sales costs ($36,000 based on the trustee's $450,000 valuation). The court will waive the 14-day period of Rule 6004(h).

9. 14-27681-A-7 MARIEELLEN ENAD — MOTION TO EXTEND AUTOMATIC STAY
GMY-1 — 8-8-14 [19]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to extend the automatic stay solely as to creditor Union Adjustment Co., stating that she filed one prior bankruptcy case which was dismissed.

The court will deny extension of the automatic stay because the debtor has not rebutted the presumption that the instant case was filed not in good faith.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (11, 12 or 13) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

11 U.S.C. § 362(c)(3)(B) and (C) further provide that:

"(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor."

The debtor's prior case, Case No. 14-26797, was a chapter 7, filed on June 30, 2014 and dismissed on July 18, 2014 due to the debtor's failure to timely file schedules and statements, including the means test form, Schedules A through J, the statement of financial affairs, the statistical summary and the summary of schedules, as specified in the Notice of Incomplete Filing. Docket 3. The Notice required that the missing documents are filed no later than July 14. The documents were never filed.

The instant case was filed as a chapter 7 on July 28, 2014, only 10 days after the dismissal of the prior case.

The debtor asserts that she had substantial excuse for not filing the missing petition documents and asserts that there is clear and convincing evidence of good faith in the filing of this case. The debtor asserts that:

"The Debtor paid the initial installment on her court fees, but other pressing financial matters left her unable to pay the full filing fee from, or at the time of, said paycheck. The Debtor was able to assemble and deliver to counsel most of the information necessary complete her initial filing a few days prior to the two week deadline, but was unable to advise counsel that she had assembled the funds to complete payment of her filing fees until the day prior said deadline, leaving counsel insufficient time to assist the Debtor. As a result, Debtor failed to complete her initial filing and her case was dismissed."

Docket 19 at 2.

In other words, the debtor's attorney did not prepare the missing documents in time to file them prior to July 14 because the debtor did not tell him that she had the funds "to complete payment of her filing fees."

Yet, the debtor's counsel does not explain why he had to wait until the debtor notified him about whether she had sufficient funds to pay the full filing fee, in order to prepare the required petition documents.

More, the court did not require the debtor to pay the filing fee in full. On the petition date of the prior case, the court entered an order permitting the debtor to pay the filing fee in three $83 installments and one $86 installment, with the first installment in the amount of $83 due on or before July 30, 2014.

Case No. 14-26797, Docket 7. And, unlike what the motion says, the debtor never "paid the initial installment" of the filing fee.

Hence, the debtor did not have to pay the filing fee in full at or around the deadline for filing the missing documents. Also, the deadline for paying the first filing fee installment (July 30) was not close to the deadline for filing the missing documents (July 14), meaning that the debtor would have had approximately two more weeks - after filing her petition documents - to come up with the funds to make the first $83 installment of the filing fee.

The court is unpersuaded that the debtor had substantial excuse for not filing the missing documents by the July 14 deadline. The debtor had an excuse, but that excuse does not rise to the level of substantial excuse. See 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). If the court were to allow the debtor's inability to timely retain counsel to prepare the missing petition documents to rise to the level of substantial excuse, every skeletal filing leading to dismissal would qualify for substantial excuse.

Accordingly, the instant case is presumptively filed not in good faith. The court does not have clear and convincing evidence that rebuts the presumption.

The debtor has proffered no other argument or evidence to rebut the presumption. The court does not find clear and convincing evidence that rebuts the presumption of this case being filed not in good faith.

The above conclusion is substantiated also by the definition of bad faith. Bad faith is determined by examining the totality of the circumstances. In re Rolland, 317 B.R. 402, 414-15 (Bankr. C.D. Cal. 2004).

"The bankruptcy court should consider the following factors: (1) whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner;' (2) 'the debtor's history of filings and dismissals;' (3) whether 'the debtor only intended to defeat state court litigation;' and (4) whether egregious behavior is present."

Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

And, importantly, a finding of bad faith does not require fraudulent intent, malice, ill will or an affirmative attempt to violate the law. Leavitt at 1224-25 (quoting In re Powers, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)); see also Cabral v. Shabman (In re Cabral), 285 B.R. 563, 573 (B.A.P. 1st Cir. 2002).

In other words, even though the debtor may have demonstrated that the filing of this case is not instigated by fraudulent intent, malice, ill will or an affirmative attempt to violate the law, such a showing by the debtor does not negate bad faith.

Finally, although the motion states that "[t]here has been substantial change in the financial or personal affairs of the debtor since the dismissal of the last case," this is not supported by the admissible evidence, including the debtor's declaration in support of the motion. And, the court has once again granted the debtor permission to pay the filing fee in installments, meaning that this court cannot tell whether the instant case will be concluded with discharge. See 11 U.S.C. § 362(c)(3)(C)(i)(III)(aa). Accordingly, this motion will be denied.

10. 12-36987-A-7 LAWRENCE/LINDA HANSEN — MOTION TO SELL
JRR-2 — 7-29-14 [51]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell as is and without warranties for $365,000 in cash the estate's interest in a real property in Rocklin, California to Finish Line Investment Property. The estate will benefit from the sale as it will receive a buyer's premium of $21,000.

The property is subject to a first mortgage held by JPMorgan Chase Bank scheduled in the amount of $366,840 and a second mortgage held by Newport Beach Holdings scheduled in the amount of $179,508.

The motion says that JPMorgan Chase Bank will receive $329,356.14 in full satisfaction of its claim, while Newport Beach Holdings will receive $8,500 in full satisfaction of its claim.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h), as escrow must close on or before August 29, 2014. In addition, he requests authority to pay a 6% real estate commission, to be split between the estate's broker, SDREOS/Keller Williams Realty, and the other broker.

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

As all liens will be paid from escrow, the property is not being sold free and clear of liens. The motion will be granted as the sale will generate proceeds for distribution to creditors of the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize the payment of the 6% commission. The motion will be granted.

11. 14-24590-A-7 FRANCISCO/DORA MAYORGA — OBJECTION TO EXEMPTIONS
PA-3 — 7-28-14 [32]

Tentative Ruling: The objection will be sustained in part and dismissed as moot in part.

The chapter 7 trustee objects to:

- the debtors' $120,085 exemption under Cal. Civ. Proc. Code § 704.730 in their residence, questioning the debtors' qualification for the exemption; and

- the debtors' exemption under Cal. Civ. Proc. Code § 704.140 in two pending worker's compensation cases, in the amount of "Unknown".

Preliminarily, the court rejects the trustee's contention that the proof of service for the opposition is deficient because it does not state the date when the debtors served the opposition documents on the trustee. The proof of service for the opposition, Docket 39, states that service was effectuated "[o]n the date below," which is identified as August 11, 2014. Docket 39 at 2 lns.6 & 27.

Additionally, even though the trustee may not have received the opposition, the trustee had actual knowledge of the opposition in time to file a timely

reply.

Further, although the objection addresses exemptions claimed by the debtors in their Original Schedule C, the debtors amended their Schedule C on August 15, 2014. Docket 44. As pertaining to the subject exemptions, Amended Schedule C continues to claim the same exemptions claimed in the Original Schedule C, with one exception - the exemptions of the worker's compensation cases are now claimed pursuant to Cal. Civ. Proc. Code § 704.160.

As the exemption in the residence has not changed, after Schedule C's amendment, the court will address that exemption as originally objected to by the trustee.

On the other hand, as the worker's compensation exemptions have been changed, now claimed pursuant to Cal. Civ. Proc. Code § 704.160, the court will dismiss this portion of the objection as moot. The instant objection does not take into account that the worker's compensation exemptions have been made pursuant to Cal. Civ. Proc. Code § 704.160. Accordingly, the objection will be dismissed as moot to the extent it implicates the worker's compensation exemptions.

Turning to the merits of the exemption in the residence, the court will sustain the objection to that exemption. The $120,085 exemption has been claimed pursuant to Cal. Civ. Proc. Code § 704.730, which provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

Rights to exemptions of property are determined as of the date the petition is filed. In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D. Nev. 1986).

Whether or not the evidentiary burden standard of Fed. R. Bankr. P. 4003(c) is subject to California's law that places the evidentiary burden for entitlement to the exemptions squarely on the debtor, the trustee cannot disapprove a negative, namely, that the debtors did not meet the requirements of Cal. Civ. Proc. Code § 704.730(a)(3) as of the petition date, April 30, 2014. See Cal. Civ. Proc. Code § 703.580(b). Hence, the debtors would still be required to come forward with evidence establishing their entitlement to the Cal. Civ. Proc. Code § 704.730(a)(3) exemption.

The debtors are asserting their exemption under Cal. Civ. Proc. Code § 704.730(a)(3)(B), given that Mr. Mayorga is only 46 years of age and claims to be physically and/or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment.

"In order to qualify for disability benefits under the [Bankruptcy] Act, a claimant must show that he or she is disabled and, as a result of the disability, is unable to engage in 'substantial gainful activity.' Lackey v. Celebrezze, 349 F.2d 76, 77 (4th Cir.1965)."

In re Rostler, 169 B.R. 408, 412 (Bankr. C.D. Cal. 1994).

As Cal. Civ. Proc. Code § 704.730(a)(3)(B) uses the same qualifying language as under the Act when determining a disability, this court will look to cases under the Act for guidance in interpreting the meaning of "substantial gainful employment."

In deciding what constitutes substantial gainful activity under the Bankruptcy Act, the Ninth Circuit has held that:

"Specifically, an activity must be both 'substantial' and 'gainful.' See 20 C.F.R. § 416.972 (1993). Work activity is 'substantial' if it 'involves doing significant physical or mental activities.' Id. at § 416.972(a) (1993). It is 'gainful' if it is 'the kind of work usually done for pay or profit, whether or not a profit is realized.' Id. at § 416.972(b) (1993). The claimant's activities need only be of the type that normally results in pay or profit. Conceivably, the claimant's activities may be gainful even if the claimant does not earn income."

In this case, Mr. Mayorga injured his back on April 16, 2012, while working with a 300-pound machine at Quality Diesel Machine. Mr. Mayorga's occupations prior to his work at Quality Diesel Machine have included working as a mechanic and as a cook. After numerous doctor's and other medical appointments, and after having to leave his work due to the pain and inability to work, Mr. Mayorga was declared 32% disabled. Docket 38 at 1-3; Docket 38, Ex. 1 at 6.

Mr. Mayorga acknowledges that he was told by his doctor that "it is conceivable that [he] could train to work in other fields which do not involve lifting heavy objects; however, [he] cannot fathom engaging in any type of work as even performing insignificant tasks requires [him] to either stand or sit for periods longer than [he] can bear." Docket 38 at 4.

Mr. Mayorga also complains of emotional pain, including depression.

Besides the statements in Mr. Mayorga's declaration, the debtors have attached a report executed by Mr. Mayorga's doctor, Timothy Yoon, under the penalty of perjury. Docket 38, Ex. 1. The report says that Mr. Mayorga should not "return to [his] usual occupation" and prescribes that he should "[a]void heavy lifting, repetitive bending and stooping." Docket 38, Ex. 1 at 7.

The court is unconvinced that Mr. Mayorga is unable to engage in any significant gainful activity. Doctor Yoon's report does not substantiate such a conclusion. The report says that the debtor should not return to his "usual occupation" but does not say that Mr. Mayorga cannot engage in other occupations.

Mr. Mayorga may no longer be able to work as a machine operator, mechanic, or even a cook. However, he may for instance work as a store clerk, gas station attendant, a process server, a telephone operator, etc. Mr. Yoon's report describes, as part of Mr. Mayorga's functional capacity assessment, the following activities as "frequently" allowed: reaching, handling, fingering, feeling, seeing, hearing, speaking.

The report describes the following activities as allowed only "occasionally": climbing, balancing stooping, kneeling, crouching, crawling, twisting. The report does not list any activities as "never" allowed. Docket 38, Ex. 1 at 7.

The report's functional capacity assessment also says that Mr. Mayorga's lifting capacity is limited to 30 pounds, his frequent lifting capacity is 10 pounds, his occasional lifting capacity is 20 pounds, and he may stand or walk less than 6 hours "per 8-hour day," may sit less than 8 hours "per 8-hour day," may push no more than 30 pounds

In light of Mr. Mayorga's functional capacity assessment, the court is not convinced that he can no longer engage in substantial gainful employment. Per Doctor Yoon's functional capacity assessment of Mr. Mayorga, the court is not persuaded that Mr. Mayorga is unable to engage in some of the following employment disciplines, for example: a store clerk, gas station attendant, a process server, a telephone operator.

Accordingly, the court will sustain the objection to the exemption in the residence under Cal. Civ. Proc. Code § 704.730(a)(3). The objection will be sustained in part.

12. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION FOR RELIEF FROM AUTOMATIC STAY
KKBY-1 — 8-4-14 [114]
OPERATING ENGINEERS LOCAL UNION #3 FEDERAL CREDIT UNION VS.

Tentative Ruling: The motion will be denied as moot and unnecessary.

The movant, Operating Engineers Local Union #3 Federal Credit Union, seeks relief from the automatic stay as to a real property in Elk Grove, California (Wilton Road). The movant seeks a "comfort order."

the court does not give comfort orders because such orders amount to advisory opinions.

Given the entry of the debtor's discharge on October 1, 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 case was closed on October 5, 2012, dissolving the automatic stay. 11 U.S.C. § 362(c)(2)(A). The case was reopened on October 29, 2012 and was reopened once again on May 28, 2013, after an earlier closure. However, nothing reinstates the automatic upon the reopening of a bankruptcy case. Thus, this motion makes no sense. It will be denied.

13. 14-24897-A-7 SHARI KENT — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
WELLS FARGO BANK, N.A. VS. — 7-18-14 [31]

Tentative Ruling: The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Yuba City, California.

The debtor objects to the motion, contending that the motion should be denied because the movant has failed to comply "with its Original Modification Offer."

The property has a value of $182,560 and it is encumbered by claims totaling approximately $204,197. 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 June 19, 2014.

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.

The debtor's objection to the motion will be overruled. Loan modifications are not inconsistent with the court's granting of relief from stay. And, to the extent there is a dispute over the debtor's loan modification with the movant, that dispute should be taken with the state court or federal district court. This is a chapter 7 case which will be over at any time, as the debtor's

discharge is due to be entered within several days after August 18, 2014.

THE FINAL RULINGS BEGIN HERE

14. 14-25103-A-7 ROBERT RAMIREZ — MOTION TO AVOID JUDICIAL LIEN
HLG-2
VS. CACH, L.L.C. — 7-18-14 [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 (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 Cach, LLC for the sum of $5,488.54 on September 7, 2012. The abstract of judgment was recorded with Sacramento County on July 2, 2013. 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 $221,618 as of the date of the petition. The unavoidable liens total $244,912 on that same date, consisting of a first mortgage for $226,496 in favor of Wells Fargo Home Mortgage and a second mortgage for $18,506 in favor of Wells Fargo Bank. 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. Docket 23.

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).

15. 14-23708-A-7 APRIL MENDES — MOTION TO AVOID JUDICIAL LIEN
DBJ-3
VS. MOHAWK SERVICING, L.L.C. — 7-21-14 [31]

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 Mohawk Servicing, LLC for

the sum of $10,969.66 on May 3, 2012. The abstract of judgment was recorded with Glenn County on June 21, 2012. That lien attached to the debtor's residential real property in Glenn, 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 $117,000 on that same date, consisting of a single mortgage in favor of PNC Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) 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).

16. 14-23708-A-7 APRIL MENDES — MOTION TO AVOID JUDICIAL LIEN
DBJ-4
VS. NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
7-21-14 [36]

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 Northern California Collection Service, Inc. for the sum of $3,834.65 on September 12, 2012. The abstract of judgment was recorded with Glenn County on October 4, 2012. That lien attached to the debtor's residential real property in Glenn, 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 $117,000 on that same date, consisting of a single mortgage in favor of PNC Mortgage. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) 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).

17. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-14 — 7-28-14 [673]

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 Choice Administrators Insurance Service, Inc., resolving preference litigation for the avoidance and recovery of $41,187.65 in transfers made by the debtor within 90 days prior to the petition date.

Under the terms of the compromise, Choice Administrators will pay $5,000 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 mere conduit 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.

18. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-15 — 7-28-14 [678]

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 Gallagher Bassett Services, Inc., resolving preference litigation for the avoidance and recovery of $50,000 in transfers made by the debtor within 90 days prior to the petition date.

Under the terms of the compromise, Gallagher Bassett Services will pay $5,000 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 mere conduit, ordinary course of business and contemporaneous exchange 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.

19. 12-28413-A-7 F. RODGERS CORPORATION — MOTION TO APPROVE COMPROMISE
CWC-17 — 7-28-14 [688]

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, on one hand, and Ajilon Communications of California, Inc., Adecco Group, NA, and Accounting Principals, Inc., on the other hand, resolving preference litigation for the avoidance and recovery of $27,714.46 in transfers made by the debtor within 90 days prior to the petition date.

Under the terms of the compromise, Ajilon, Adecco and Accounting Principals will pay $4,000 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 new value, ordinary course of business and contemporaneous exchange 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.

20. 14-24416-A-7 LELAND COMBS AND MICHAEL CHINN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 7-18-14 [23]
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 in part and dismissed as moot in part.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2007 Ford Explorer.

Given the entry of the debtor's discharge on July 30, 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 $12,700 ($11,000 in Schedule B) and its secured claim is approximately $21,545.

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. And, the movant has possession of the vehicle already.

Accordingly, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral 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 has possession of the vehicle and it is depreciating in value.

21. 14-23227-A-7 GREGORY ZUCCARO — MOTION TO AVOID JUDICIAL LIEN
FF-3
VS. BANK OF THE WEST — 7-30-14 [29]

Final Ruling: This motion to avoid a judicial lien 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor moves to avoid a nonpossessory, nonpurchase money security interest consisting of a $60,000 claim of Bank of the West encumbering the assets of the debtor's sole proprietorship carpenter business, Sterling Industries (a.k.a. Sterling Cabinetry). Schedule D. The assets include, without limitation, various carpenter tools (both manual and power), equipment, materials, furnishings, office equipment (computer, printer, etc.), software, appliances, as described to the attachment to item 13 of Schedule B.

The motion claims that the bank's claim is secured also by the debtor's accounts.

11 U.S.C. § 522(f) provides that:

"(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the

debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is– ... (B) a nonpossessory, nonpurchase-money security interest in any–

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor."

The debtor has submitted evidence that the subject lien is a nonpossessory, nonpurchase lien. The debtor borrowed money from Bank of the West in October 2009 and gave security interest in the subject business assets as collateral for the loan. The current lien is based on the loan given by the bank.

The court has reviewed the business assets listed in Schedule B and concludes that they are "implements, professional books, or tools, of the trade" in the debtor's carpenter operation for purposes of 11 U.S.C. § 522(f)(1)(B)(ii). The debtor is a carpenter and uses the assets to work in that trade.

The scheduled value of the business assets is $16,335. Schedule B. The security interest in the assets totals $60,000 on that same date. Schedule D. The business assets have been claimed as exempt in the amount of $7,625 pursuant to Cal. Civ. Proc. Code § 703.140(b)(6), the tool of the trade, and claimed as exempt in the amount of $16,000 under Cal. Civ. Proc. Code § 703.140(b)(5). Schedule C. The respondent holds a nonpossesory, nonpurchase-money security interest in the business assets.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the security interest. Therefore, the security interest impairs the debtor's exemption of the business assets, only to the extent they are listed in the attachment to item 13 of Schedule B, and it will be avoided.

22. 14-25833-A-7 JOSE/RUBI SUAREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JBB-1 — 7-17-14 [11]
VANTAGE WEST CREDIT UNION 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, Vantage West Credit Union, seeks relief from the automatic stay

with respect to a 2004 Cadillac Escalade 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 May 31, 2014 and a meeting of creditors was first convened on July 1, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 30. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to reaffirm the debt secured by the vehicle, the debtor did not do so. And, no 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 July 31, 2014, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on July 1, 2014, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on July 31, 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.

23. 14-24435-A-7 WILLIAM/CLEOPATRA MORRIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
BANK OF AMERICA, N.A. VS. — 7-15-14 [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 (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, Bank of America, seeks relief from the automatic stay as to a real property in Citrus Heights, California. The property has a value of $180,207 and it is encumbered by claims totaling approximately $233,319. The movant's deed is in first priority position and secures a claim of approximately $204,957.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 28, 2014.

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.

24. 14-25946-A-7 DORY RODRIGUES
TRM-1
LOGAN PARK APARTMENTS, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-18-14 [17]

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, Logan Park Apartments, LLC, seeks relief from the automatic stay as to real property in Sacramento, California. The movant is the legal owner of the property and the debtor leased the property. On May 5, 2014, the debtor served the movant with a 30-day notice of intent to vacate the property. On June 3, 2014, the debtor filed the instant bankruptcy case. The debtor however did not vacate the property. On June 10, the movant filed an unlawful detainer action in state court, without knowing that the instant bankruptcy case had been filed. The debtor filed an answer to the unlawful detainer complaint on June 17, without mentioning the instant case. On June 19, the movant learned on its own that the instant case had been filed.

The movant does not seek retroactive relief from stay. It only seeks relief from stay to continue the prosecution of the pending unlawful detainer action.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, she has remained on the property without paying rent, even after she herself gave a 30-day notice of intent to vacate the property. This is cause for the granting of relief from stay. The court also notes that the trustee filed a report of no distribution on July 10, 2014.

Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the parties to go back to state court in order for that court to determine who is entitled to possession of the property.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

25. 13-20260-A-7 CHRISTOPHER/MONICA FREEMAN
DMH-1
VS. MIDLAND FUNDING, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
7-17-14 [29]

Final Ruling: The motion will be dismissed without prejudice.

The amended notice of hearing is not accurate. Docket 36. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. Docket 37. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

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

26. 14-24260-A-7 CATHERINE SEBALA — MOTION TO AVOID JUDICIAL LIEN
PK-1 — 7-22-14 [11]
VS. CITIBANK, N.A.

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

The proof of service accompanying the motion indicates that the motion was not served on Citibank, it was not served by certified mail and was not addressed to an officer of the bank. The motion was served on CIR Law Offices. Docket 15 at 2.

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

27. 14-26560-A-7 JOSEPH/MARIA GABRIELA PACLIBARE — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 7-28-14 [12]
AMERICAN HONDA FINANCE CORP. 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, American Honda Finance Corporation, seeks relief from the automatic stay with respect to a 2010 Honda Civic EX 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 June 23, 2014 and a meeting of creditors was first convened on July 16, 2014. Therefore, a statement of intention that refers to the movant's property and debt was due no later than July 16. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

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

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

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no 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 15, 2014, 30 days after the initial meeting of creditors.

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

The trustee in this case has filed no such motion and the time to do so has expired.

Therefore, without this motion being filed, the automatic stay terminated on August 15, 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.

28. 14-27060-A-7 RICHARD/CRYSTAL ROOT — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 7-25-14 [9]
BANK OF AMERICA, N.A. VS.

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

The motion will be granted.

The movant, Bank of America, seeks relief from the automatic stay as to a real property in Oroville, California. The property has a value of $150,406 and it is encumbered by claims totaling approximately $160,810. 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 August 6, 2014.

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.

29. 14-24563-A-7 TERRY/KYLE HODGES — MOTION TO EMPLOY AND APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
BHS-1 — 7-16-14 [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 creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at

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

The motion will be granted.

The trustee requests approval to employ Barry Spitzer as counsel for the estate. Mr. Spitzer will assist the estate with the sale of the estate's interest in a real property in Wilton, California (including negotiating the sale and preparing and filing a motion to obtain court approval of the sale). The proposed compensation is a flat fee of $2,000. The movant also requests approval of payment of the compensation, without further order of the court.

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."

The court concludes that the terms of employment and compensation are reasonable. Mr. Spitzer is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

30. 14-24563-A-7 TERRY/KYLE HODGES — MOTION TO EMPLOY AND APPROVE COMPENSATION OF BROKER
BHS-3 — 7-16-14 [31]

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

The motion will be granted.

The trustee requests approval to employ Lisa McKee as real estate broker for the estate to assist the trustee to establish the fair market value of a real property in Wilton, California. Also, the trustee is requesting authority to

pay Ms. McKee a flat fee of $250 for her services, without further court order.

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."

The court concludes that the terms of employment and compensation are reasonable. Ms. McKee is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

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

31. 14-26663-A-7 MUMTAZ/LYNN ASHRAF — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 — 7-15-14 [11]
HONDA LEASE TRUST 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 but the absence of the automatic stay will be confirmed.

The movant, Honda Lease Trust, seeks relief from the automatic stay as to a 2012 Honda CRV.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On August 2, 2013, the debtors filed a chapter 7 case (case no. 13-30250). But, the court dismissed that case on August 20, 2013 due to the debtors' failure to timely file petition schedules and statements. The debtors filed the instant case on June 26, 2014. The prior chapter 7 case then was pending within one year of the filing of the instant case. The court has reviewed the

docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject vehicle on July 26, 2014, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on July 26, 2014, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

32. 11-34464-A-7 STUART SMITS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MHK-2 — 6-11-14 [280]
ELIAS D. BARDIS, VS.

Final Ruling: The hearing on this motion has been continued to September 22, 2014 at 10:00 a.m. Docket 296.

33. 12-20874-A-7 MARK/JUANITA BALLARD — MOTION FOR RELIEF FROM AUTOMATIC STAY
DHB-1 — 7-23-14 [174]
WELLS FARGO BANK, N.A. VS.

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

The motion will be granted 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 Plymouth, California.

Given the entry of the debtor's discharge on June 17, 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 $315,000 and it is encumbered by claims totaling approximately $535,070. The movant's deed is in first priority position and secures a claim of approximately $566,315.

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.

34. 12-32093-A-7 DAVID/SUZANNE BURKHART — MOTION TO AVOID JUDICIAL LIEN
DRE-10
VS. NIXON-EGLI EQUIPMENT CO. — 7-15-14 [109]

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

The motion will be granted.

A judgment was entered against Debtor David Burkhart in favor of Nixon-Egli Equipment Co. for the sum of $135,475.03 on May 2, 2011. The abstract of judgment was recorded with Sacramento County on June 1, 2011. That lien attached to the debtors' residential real property in Elk Grove, California (Mooney 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 $320,000 as of the date of the petition. The unavoidable liens total at least $472,000 on that same date, consisting of a $300,000 IRS lien on the property and a mortgage for $172,000 in favor of Select Portfolio Servicing. 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. Docket 47.

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).